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MONTANA LEGISLATIVE HISTORY

Chapter 518 19 95

Bill H 308 S _____ Original bill & history ____C

H. Committee on Local Government		S. Committee on Local Government	
Hearing Date(s) Feb 02	✓ C	Hearing Date(s) Mar 08	✓ C
Feb 16	✓ C	Mar 23	✓ C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Feb 17	✓ C	Mar 24	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

The Free Conference Committee Minutes were not recorded.

Conference Committee

Apr 09

HB 308 INTRODUCED BY EWER, ET AL.

REVISE LAWS RELATING TO COUNTY WATER AND SEWER DISTRICTS

1/21	INTRODUCED		
1/21	FIRST READING		
1/21	REFERRED TO LOCAL GOVERNMENT		
1/23	FISCAL NOTE REQUESTED		
1/27	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
2/02	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED AS AMENDED	91	8
2/22	3RD READING PASSED	86	11
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO LOCAL GOVERNMENT		
3/09	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED	49	0
3/30	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/04	MOTION FAILED TO CONCUR WITH AMENDMENTS ON 2ND READING	44	56
4/04	CONFERENCE COMMITTEE APPOINTED		
4/07	HEARING		
4/07	CONFERENCE COMMITTEE DISSOLVED		
4/07	FREE CONFERENCE COMMITTEE APPOINTED		
4/10	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	90	9
4/12	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	90	9
	SENATE		
4/05	CONFERENCE COMMITTEE APPOINTED		
4/07	CONFERENCE COMMITTEE DISSOLVED		
4/07	FREE CONFERENCE COMMITTEE APPOINTED		
4/11	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	0
4/12	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	46	3
4/18	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/25	SIGNED BY GOVERNOR CHAPTER NUMBER 518 EFFECTIVE DATE: 04/25/95		

HB 309 INTRODUCED BY GRIMES, ET AL.

LIMIT NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE CASES

BY REQUEST OF THE GOVERNOR'S OFFICE

1/21	INTRODUCED		
1/21	FIRST READING		
1/21	REFERRED TO JUDICIARY		
2/02	HEARING		
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	69	31
2/16	3RD READING PASSED	72	25

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0308, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

This bill revises laws governing county water and sewer districts. These districts are established for the purposes of owning and operating water supply systems and wastewater treatment systems. The proposed legislation clarifies the purposes for which districts can assess rates and charges and defines the authority of districts to establish rules and regulations governing the operation of the system. The bill also gives district boards additional powers to collect charges in the event of non-payment. The bill will, in addition to existing financing mechanisms, allow districts to finance improvements through issuance of general obligation bonds. This legislation will also allow districts to refund outstanding bonded indebtedness without a vote of the electorate.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. Department of Health and Environmental Sciences (DHES) staff resources will not be affected by the implementation of these new requirements or assignment of authority governing county water and sewer districts.
3. There may be some reduction in the risk to the state where state sponsored loans have been made to districts to finance system improvements. However, no means exists to calculate what the possible fiscal impact from this would be.

FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES

This bill should have a beneficial effect on local revenues by allowing county water and sewer districts additional authority to insure collection of revenues needed for facility operation and debt payments. It will also give a district more flexibility in funding system improvements and could lower the cost of borrowing money by reducing risk.

Dave Lewis 1-27-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

David Ewer

DAVID EWER, PRIMARY SPONSOR DATE

{Tape: 1; Side: A; Approx. Counter: 20.9;}

HEARING ON HB 308

Opening Statement by Sponsor:

REP. DAVID EWER, HD 63, Helena said HB 308 is an effort to try and clarify the statutes in Montana law that deal with county, water and sewer districts and there is a pressing need for this. **REP. EWER** explained what county, water and sewer districts do and how they are empowered to do so and what the bill does to clarify the powers. Montana is going to have a growth and this should be developed as officially and environmentally sound as possible. County water and sewer districts have the same standing as rural fire districts, municipalities, and counties. The people running these districts are elected and the people in the district have to want it. This bill will clean up some of the problems in the water and sewer law. **REP. EWER** explained the concept of benefited property and what this bill does and what current law says. Without clarifying the code it's difficult to plan for growth and is hard to oversize the lines.

{Tape: 1; Side: A; Approx. Counter: 44.2}

Proponents' Testimony:

Arnold Peterson, representing **Montana Rural Water Systems, Inc.** and **North Havre County Water District** said they support HB 308 and it will clear up some of the confusion in the present law and correct some of the problems presently faced by many of the small towns and water districts across the state of Montana. **Mr. Peterson** submitted written testimony. **EXHIBIT 2**

Harry Whalen, representing **Montana Rural Water Systems**, said the North Valley County Water and Sewer District Board officially supports HB 308. He presented their written testimony. **EXHIBIT 3** **Mr. Whalen** said he specializes in rate structuring for all water systems in the state of Montana. There are two components in the rate structure, base rate and variable rate. The base rate includes the bonded indebtedness, the debt service, the required cash reserves that are required and the depreciation. He explained the bonded indebtedness.

{Tape: 1; Side: A; Approx. Counter: 51.5;}

Chip Hamilton, representing **Big Sky County Water and Sewer District #363**, said this legislation would enable the county, water and sewer district to better carry on the business they have been charged with by the legislature, providing essential services to their customers within the district and with methods that have been legislated to protect and insure that the services and the facilities construed can be financed through debt and the appropriate costs can then be recovered from benefiting parties.

Mr. Hamilton said the amendments add clarification to the existing law. On behalf of his board of directors, members and citizens of Big Sky County Water and Sewer District #363, he urged a do pass of this legislation.

Rob McCracken, Montana Department of Commerce, said he manages state, financial and technical programs which provide assistance to county, water and sewer districts. He also chairs the Montana waste water and solid waste action coordination team for the WASACK. This team includes twenty different agencies and organizations which finance and provide technical assistance for water, waste water and solid waste facilities. They work with county water and sewer districts and their goal is to help them manage their systems and provide greater financial efficiency to be able to get the system improvements made. **Mr. McCracken** offered to provide technical information for anyone interested.

{Tape: 1; Side: A; Approx. Counter: 56.4;}

Gordon Morris, Director, Association of Counties, said he had reviewed HB 308 and recommended it for favorable consideration.

Bobby Broadway, Manager, Sun Prairie Village County Water and Sewer District, stated he also sits on the board of directors for the Montana Association of Water and Sewer Systems. He and his association fully supported HB 308 and recommended the committees' approval and support. **EXHIBIT 4** Mr. Broadway said this bill clearly outlines a list of ten criterion for a board of county commissioners, in the initial formation of a district, and an existing district's board of directors to use in determining whether a property is benefitted.

Under current statutes, districts have no right to file any type of lien for delinquent user fees or debt service charges. The lien proposed in this bill is a step in the right direction and will give districts a means of collecting from property owners who vacate their developed properties owing outstanding charges. The question of due process in applying a tax lien for delinquent charges for services is well spelled out in this bill. He urged support for this bill.

Stan Clothier, President Flathead Water and Sewer District, Evergreen, said his board has authorized him to state they are in support of this bill with amendments. If this law had been in existence at the time the board was preparing for the $15 million sewer project they are currently engaged in, some of the issues they had to deal with would have been taken care of. **EXHIBIT 5**

Opponents' Testimony:

REP. DOUG WAGNER, HD 83, Hungry Horse, said he spoke with the sponsor, but has not had time to research this bill completely but had many phone calls telling him to vote no. He gave some history saying Hungry Horse was built when the dam was built in

1948. Until recently, they pumped a million gallons of water a day into the ground. They bought out the privately owned system and got a loan grant combination from the Farmers Home Administration. They replaced the entire leaking system with a new system. They did not allow anyone out of the district boundaries, even though they had twenty to thirty wells in town to provide more water. They put new lines down the street and offered those who wanted to hook on to do so. Originally they went to the County Commissioners and borrowed money to get started, a five-year loan, and they taxed the entire district whether they hooked up or not and they all paid it. They hired a knowledgeable engineer and the system is working well.

REP. WAGNER explained how their system works. Each home hooked to the system has a meter on it and they pay for the amount of water they use. There are shut off valves for nonpayment people and they have 1% or less delinquencies they don't collect on. His concern is not wanting to see anything negative come to the possibility of funding water systems or sewer districts. He does not want any more power given to the board of directors that are elected by the people. This would overturn a Supreme Court decision. He didn't believe this is as unfair as the sponsor indicated.

Bill Erwin stated he petitioned to be excluded from a district but was denied. He stated his concerns with various sections in the bill and his concerns with benefited and non-benefited lands. This bill would also create new functions for water and sewer districts being involved in estimating market value increases in property.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON referred to Section 5, page 5, and asked **REP. EWER** to comment this. **REP. EWER** said this gets into the essence of this bill and the issue is how to have facilities sized correctly to meet the district and is it based on the current residences who want to be hooked up or not.

REP. ANDERSON said under the bill there would be a vote for bonding for new construction, but no vote for bonding for paying off old bonds and he asked if that was different than current law. **REP. EWER** responded under current law they cannot have refunding bonds for county water and sewer districts. Almost every other political subdivision has the option under current law, to sell bonds to retire old bonds, the philosophy being they have already voted on the current debt. **REP. EWER** cited examples on school and revenue bonds.

REP. ANDERSON asked **REP. EWER** to address the concerns **REP. WAGNER** had about the lien being placed against the property owner when it is the tenant that hasn't paid the water bill. **REP. EWER** said

it is common that landlords bear some risk on what the renters do. He submitted the way to cover that is to have a security deposit and 30 day leases. He said they need to protect themselves as landlords.

REP. BOB KEENAN referred to the housekeeping phrase. **REP. EWER** responded this was not a housekeeping bill. It was his intention that any statute passed would be clear enough so it doesn't have to be litigated. **REP. KEENAN** asked what the appeal process would be to alleviate constitutional fears of being forced from their land by having a line go across their property line. **REP. EWER** said he has some crucial amendments on how charges will be assessed. He proposed that they allow a way to assess charges on rural special improvement districts to be the method used for water and sewer districts. **REP. EWER** read his amendment. **EXHIBIT 6.** He explained there is going to be some discretion and ability to protest the assessment methods. There are five different methods of assessments. **REP. EWER** explained the intention of this bill.

REP. NORM MILLS said if a line is built between two points and pass five farms, what lets them out from having to pay. **REP. EWER** explained new districts have to petition for service and the charges of the voting process being 60% in favor and due process. **REP. MILLS** referred to Page 5, Item 2 Sub-G, and asked who does the estimating. **REP. EWER** offered to amend that out. **REP. MILLS** referred to Item 2, J, and asked the meaning. **REP. EWER** responded if it's not clear, it will be cleaned up.

{Tape: 1; Side: B; Comments: Turned tape over.}

REP. MILLS said he has a problem with a lien that could be put against property when a renter doesn't pay his bill. **REP. EWER** stated he strongly disagrees and said in his opinion the way to cover that is to have security deposit.

REP. LINDA MCCULLOCH asked what impact this bill would have on an area that is starting up a sewer and water district. **REP. EWER** responded it is his hope this would have a favorable impact and there would be a more viable water and sewer district. Under current law it's not clear if they could get the architecture design fees paid for. **REP. MCCULLOCH** asked about the concern of overturning a Supreme Court decision. **REP. EWER** responded the decision he eluded to was the case of Rae v. Trunk. He explained the issue (Exhibit 4) and said with the Trunks not paying and the assessments, they get to "skate and it falls on the all the taxpayers in the district.

REP. JOHN BOHLINGER asked about the definition of benefit of the water line being brought in and if the person elects not to hook up and determines he hasn't benefited from this and if the person were to have a fire and a fire hydrant was available to save his home, is that a benefit. **REP. EWER** stated that he would consider it to be a benefit.

REP. JOE TROPILA complimented **REP. EWER** for giving a nice brief presentation and said having been involved for twelve years in water/sewer/paving districts, SID'S, etc., he made it clearer than he has ever heard it described before.

REP. TROPILA asked **Mr. Clothier** to comment on his trailer court. Mr. Clothier attested he is also the state president of the Montana Landlords Association and he owns and operates Spruce Park Mobile Village in Kalispell and has rentals in Kalispell and around the state. The individual units are metered. In Spruce Park they are on their own private wells. His feeling on the landlord being accountable for the bill and as for him, as President of Evergreen Water and Sewer, it's easy, they want their money and for him as a landlord, it's just as easy. He explained the higher profit of renting a house that is on private water and sewer.

REP. TROPILA asked **REP. EWER** if he was in agreement with the amendments offered. **REP. EWER** discussed the three amendments and said he would support them.

{Tape: 1; Side: B; Approx. Counter: 17.5; Comments: .}

REP. WILLIAM BOHARSKI referred to the language in Section 5 to determine if this is benefited and asked if that only deals with Sub-1323-24. **REP. EWER** explained they are clearly benefited, they are getting the water and sewer line. He discussed rates and charges on benefited property and statute in debt. **REP. BOHARSKI** said this would be followed up in executive action. He discussed the wording on the provisions on the term of the bonds and how they are going to be paid off and the way the revenue is collected to retire the bonds. **REP. EWER** responded only to a point he feels it is a legitimate concern. He referred to the language on Page 6, Line 20 2-A, regarding refunding bonds and explained what the section says.

REP. BOHARSKI discussed the scenario of the possibility of the board changing to access fees based on acreage to retire bonds rather than on original value. He said this is not an essential section of the bill and could be amended out. **REP. EWER** responded that under the part of the bill contemplated, that scenario is not possible. He explained once general obligated bonds are used, the issue of benefit is no longer relevant because they are not charging people, all the property taxpayers in the district will be charged. He explained the options, and the amendment handling this.

REP. TROPILA stated there is a person present from the DNRC that can give technical information in response to **REP. BOHARSKI's** question. **Anna Miller, Department of Natural Resources,** explained that the department holds many of the mortgages for the water and sewer districts. By allowing water and sewer districts to use the general obligation of bond option when they are starting up, they can vote that in and approve the debt. She

explained the different provisions and financing mechanisms of paying to get out from under the general obligation and go to rates and charges.

{Tape: 1; Side: B; Approx. Counter: 28.9; Comments: .}

REP. BOHARSKI asked if this gives the board the authority to switch to a revenue type bond and retire those general obligation bonds and decide how the revenue is going to be generated to retire the revenue bonds. **REP. EWER** said yes, if they have general obligation bonds because they have a new district they don't believe there is going to be enough market acceptance for underwriters to run a revenue base, then they could have the issue of general obligation bonds. He explained the advance refunding of general obligation bonds.

Closing by Sponsor:

REP. EWER discussed some of the opponents' concerns and said many of their points do what the bill tries to do. Under current law, taxing the residences cannot be done. He said giving more power to trustees and elected officials, if you don't believe they would do their mission within the law, then they shouldn't have local governments. He explained that the statute has due process of how to petition out before a district is created or when a district is petitioned in.

HOUSE OF REPRESENTATIVES

Local Government

ROLL CALL DATE 2-8-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bill Boharski, Chairman	✓		
Rep. Jack Herron, Vice Chairman, Majority	✓		
Rep. David Ewer, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Shiell Anderson	✓		
Rep. Ellen Bergman	✓		
Rep. John Bohlinger	✓		
Rep. Matt Brainard	✓		
Rep. Matt Denny	✓		
Rep. Rose Forbes	✓		
Rep. Toni Hagener			✓
Rep. Bob Keenan	✓		
Rep. Linda McCulloch	✓		
Rep. Jeanette McKee	✓		
Rep. Norm Mills	✓		
Rep. Debbie Shea	✓		
Rep. Joe Tropila	✓		
Rep. Diana Wyatt	✓		

EXHIBIT 2
DATE 2-2-95
HB 308

TESTIMONY FOR HB308

My Name is Arnold Peterson - Representing Montana Rural Water Systems, Inc. and the North Havre County Water District.

I appear in support of HB308.

This is in reality a house keeping bill and will hopefully clear up some of the confusion in the present law and correct some of the problems presently faced by many of the small towns and Water Districts across the State of Montana.

Cities & Towns can use special improvement Districts to ensure payment of Construction Costs.

This is not always possible especially for Rural Water Districts.

Many of these systems were made possible with the help of Farmers Home Administration and other governmental agencies.

How ever repayment of these loans has in many cases been very difficult because the laws under which they can recover Costs of Construction and operation are, in many cases not too clear.

House Bill 308 strives to address many of these problems.

Many of the financial problems we have to deal with are beyond our control and come from a people driven agency called the Environmental Protection Agency.

Present laws are very explicit above the quality of Water we produce or the safety of the effuent discharged from our sewer systems but they are not so explicit in telling us how to get the money to pay for the equipment and the testing we are required to do to meet these standards, let alone the cost of construction and operation of these systems.

I would like to call your attention to two Supreme Court decisions RAE#I rendered in 1985 & REA #II rendered in 1991 - With special reference to Justice Webers Comments and ask you. If the Courts & Lawyers are confused by the present law how do you expect lay people to understand it.

I do not see where House Bill 308 renders any new authority it just makes existing laws more understandable.

EXHIBIT 3
DATE 2-2-95
HB 308

NORTH VALLEY COUNTY WATER & SEWER DISTRICT, INC.
P.O. BOX 119
ST. MARIE, MONTANA 59231
(406)524-3374

MONTANA RURAL WATER SYSTEMS, INC.
925 7TH AVE. SO.
GREAT FALLS, MONTANA 59405

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO COUNTY WATER AND SEWER DISTRICTS; PROVIDING FOR RATES BASED UPON THE AVAILABILITY OF FACILITIES; PROVIDING FOR TERMINATION OF SERVICES AND COLLECTION OF DELINQUENT CHARGES AS A TAX *LIEN UPON* PROPERTY OR BY FILING SUIT IN ANY COURT WITH JURISDICTION; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS; CLARIFYING THE AUTHORITY TO ISSUE REFUNDING BONDS; AMENDING SECTIONS 7-13-2218, 7-13-2301, 7-13-2321, AND 7-13-2324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

DEAR SIR:

The North Valley County Water and Sewer District Board officially supports and requests the State of Montana to pass this legislation. (LC495)

With the huge water & sewer system already in place (built to support approximately 1,500 customers), and having only a small population of approximately 250 customers, of which only about half of that population being year round residence, and the other half only being part time residence. It is extremely important to charge all home owners the base rate to maintain the availability of the water and sewer facilities. Without the right to charge for maintaining the facilities, the charge to the full time residence would be a financial catastrophic situation, and most likely cause some of the full time residence to relocate from our community, creating a worse financial crisis. We need the ability to charge all home owners the base rate to maintain a water and sewer facility for all.

The ability to collect delinquent charges as a tax lien would be a great assistance in this [illegible] delinquent charges has proven to be almost non-existent

The passage of this legislation, would not only help the small non-profit rural water districts, but would be a big help, and eliminate a financial burden on a few, to maintain facilities for many more. The rural citizen of Montana, request and needs this Legislation passed and made law.

Sincerely,

John Roach

John Roach
Chairman/North Valley County Water & Sewer Dist., Inc.

JR/ps

Maurice Jarrett Ralph Be is Robert Anderson Darrol Detrick

EXHIBIT 4
DATE 2-2-95
HB 308

TESTIMONY
Before
HOUSE STANDING COMMITTEE ON LOCAL GOVERNMENT

Reference: House Bill 308
"AN ACT REVISING LAWS RELATING TO COUNTY WATER AND SEWER DISTRICTS;..."

February 2, 1995

Mr. Chairman,

Members of the Committee

For the record, my name is Bobby Broadway. I am the manager of the Sun Prairie Village County Water and Sewer District and I also sit on the Board of Directors of the Montana Association of Water and Sewer Systems.

I and my Association, fully support HB 308 and recommend this committee's approval and support.

This bill is essentially a housekeeping effort which clarifies existing statute. It qualifies more specifically the powers of a district and defines those powers so that they are clear and understandable.

The requirement in this bill to review rates at least every two years is a measure to assure that district management and boards of directors are meeting their obligation to their customers to ensure that rates are sufficient to meet operating expenses, bonded debt requirements and to provide for future replacement of failing or aging systems.

The review, so directed, is not at a level requiring a full scale rate structuring study. Should a district find it's rates are not meeting its requirements, it would at that time initiate such a rate setting study. This is not an onerous requirement. It is one which should be being done by district boards when setting their annual budget. Those districts which have bonded debt, especially bonded debt to the State of Montana through Department of Natural Resources' Water Development Loan program are required to maintain revenues equal to 125 percent of the average annual principal and interest requirements on their bonded debt and required reserves. This review is a measure to ensure that at least every two years, boards are looking at this obligation.

There has long been a need for a clear way, other than being connected to a water and sewer system to determine who is benefitted. If a property's value increases by virtue of the availability of a water or sewer main, located in reasonable proximity, that property is benefitted and its owner(s) should share in the cost of construction and maintenance of those services. Current statute does not speak to define benefit as does this bill. This bill clearly outlines a list of ten criterium for a board of County Commissioners, in the initial formation of a district, and an existing district's board of directors to use in determining whether a property is benefitted.

Determination of benefit is a clear issue of equity. I suggest to you that undeveloped property which is benefitted by availability of water and sewer service should share in the cost of construction and maintenance.

I would suggest you look at the case of "Rae vs Trunk" in which, because there is no clear definition of benefit, the Supreme Court of Montana held that even though the water main ran adjacent to the Trunk's property, it was not benefitted because it was not connected to the main. Therefore, Trunk was not obligated to share in the cost of construction of the mains. However, the Court ruled

that "Rae" was obligated to connect Truck's property to the system upon demand. Trunk's property is clearly benefitted by availability.

Under current statutes, districts have no right to file any type of lien for delinquent user fees or debt service charges. The lien proposed in this bill is a step in the right direction and will give district's a means of collecting from property owners who vacate their developed properties owning outstanding charges. The question of due process in applying a tax lien for delinquent charges for services is well spelled out in the bill.

I would also point out that a lien is not the only remedy made available by this bill. It clearly allows districts to pursue delinquent accounts in a court of law.

I would stress that districts have an obligation to pursue all delinquent charges vigorously to provide equity to those users who pay regularly and consistently for the services they receive. It becomes an issue of fairness as well as economics.

My own district has accrued thousands of dollars in bad debts over the years because we have not had a workable and distinctly clear method to ensure collections or define how a property is benefitted.

The new section on issuance of general obligation bonds is needed to provide additional methods for financing capital improvements to water or wastewater systems. Currently the only methods available is for a district to collect for replacement and depreciation, sell revenue bonds or secure grants from outside sources. We are not asking, in this bill, anything which is not approved by the vote of the electorate.

Should any of you on the committee be concerned that there is not a cap on this bonding authority, it is because that most district's taxable value is such that the proceeds from a revenue bond would be insufficient to make any difference in the cost of a major project. As a case in point, I use Sun Prairie Village who's taxable value is $359,599.00. Applying a total bonded debt cap of 28 percent would only give a total bonding authority of $89,900.00. The relative small amount of a 28 percent bonding authority is not worth the efforts involved in securing the bond.

Thank you for your time and I again urge your support for this measure.

EXHIBIT 5
DATE 2-2-95
HB 308

2/2/94

HOUSE BILL 308
COMMITTEE ON LOCAL GOV'T

DEAR CHAIRMAN & COMMITTEE:

PLEASE ACCEPT THIS WRITTEN TESTIMONY.
THE LANDLORD IS USING AVAILABLE WATER AND SEWER SERVICES AS A SALES (RENTAL) TOOL FOR HIS BUSINESS. A HOUSE ON PUBLIC SERVICES IS MORE DESIRABLE THAN THE SAME HOUSE ON PRIVATE WELL AND SEWER. THE LANDLORD SHOULD NOT BE SURPRISED IF HE HAS TO ASSUME THE UTILITY RISK THE PROVIDES HIM ADDITIONAL PROFIT.

STAN CLOTHIER
PRESIDENT EVERGREEN
WATER & SEWER
PRESIDENT MONTANA
LANDLORDS INC.

EXHIBIT 6
DATE 2-2-95
HB 308

Amendments to House Bill No. 308
First Reading Copy

Requested by Rep. Ewer
For the Committee on Business and Industry

Prepared by Bart Campbell
February 2, 1995

1. Page 3, line 13.
Following: "facilities."
Insert: "In establishing and imposing the facilities charge, the board may use any one or a combination of the methods of assessment applicable to rural special improvement districts as provided in 7-12-2151."

2. Page 3, line 18.
Following: "(4)(a)"
Insert: "A district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of this subsection (4)."
Following: "services"
Strike: "incurred"
Insert: "is due and payable"

HOUSE OF REPRESENTATIVES

Local Government SUB-COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Z.O. "Chip" Hamilton BUDGET _____

ADDRESS P.O. Box 160655 Big Sky, MT 59716 DATE _____

WHOM DO YOU REPRESENT? Big Sky County Water & Sewer Dist 363

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: _____

HR:1993
CS16

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Local Government COMMITTEE DATE 2-2-95

BILL NO. 308 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Osmold Peterson	Mont Rural Water North Havre Water	X	
R F LABBE	MONTANA RURAL WATER DEER LODGE MT	X	
HARRY W HALEN	MONTANA RURAL WATER	X	
STAN CROTHERS 1985 Hwy 35 KALISPELL 59901	EVERGREEN WTR & SWR	X	
Dan Keil Box 1421 Conrad	Tiber Co Water + MRWS	X	
Bobby Brockway 205 Washington Blvd. G.F.	Sun Prairie Village W+S MT ASSOC Water & Sewer Sys	X	
NICK V. CLOS 925 7TH AVE S GREAT FALLS MT.	M.R.W.S. MT. RURAL WATER SYSTEMS	X	
T.O. Chip Hamilton P.O. Box 160655 Big Sky, MT. 59716	Big Sky County Water and Sewer Dist. #363	X	
Genevieve S. Baumann 337 S. MtN View Dr, Kalispell 59901	Evergreen water	X	
Bill Breitzius 401 Van Buren, G.F. Falls, 59404	SPV County water & Sewer District	X	
Mike Kress, Mountain 1221 Shakespeare Missoula MT	MOUNTAIN LINE (HB 270)	X	
THOMAS THIEL Box 122 Bigfork, MT	Bigfork Co. Water & Sewer	X	
Walter M. Sheldon 1241 Bighorn Rd Helena, MT 59601	Treasure State Acres Sewer District	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
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CS-14

Douglas T Wagner | Rep HD 83 | X oppose

level are they required to place that stabilization. **REP. WENNEMAR** responded the rent stabilization would be at the level it is at when it's at 75% occupancy. If they were paying $250 a month rent and at 70% occupancy they reach 75%, the stabilization level is at $250 a month.

REP. LINDA MCCULLOCH said if the rent is capped and the taxes go up, she assumed in other areas where they do this they have some way of taking it into account. **Ms. Case** responded it is up to the local government to decide, and the mobile home park expenses incurred would be taken into account by local governments in order to ensure that as those rates rise they allow people to get some recovery.

Closing by Sponsor:

The sponsor addressed the concern over the local government singling them out. The Public Service Commission (PSC) singles out all utility companies and protects consumers from excessive rates and this would not be different. The incentive in making new mobile home parks would be that they would be exempt for five years or until they reach 75% occupancy. This allows the local community to decide when it is needed. He offered a conceptual amendment stating that a referendum would have to be held for the ordinance to take effect. This is a strong message to people for local communities that they trust them to enact their own laws and the state doesn't need to be involved.

EXECUTIVE ACTION ON HB 308

Motion: REP. DAVID EWER MOVED HB 308 DO PASS. REP. EWER MOVED HIS AMENDMENTS.

Discussion:

REP. EWER referred to page 5, first part of amendment, strike line 20 in its entirety. He moved on line 23 to insert the word "like". He introduced the typed amendments of February 2. **REP. EWER** explained the four amendments.

REP. JACK HERRON asked if it is a normal situation on a municipality where they have delinquent taxes, for the county assessor to put it in taxes. **REP. EWER** explained that under the law, municipalities have the power to put delinquent sewer charges on the tax roll. Currently, they do not have the power to put delinquent water charges on it. There is precedent for it. He then explained the rationale.

Vote: The motion to adopt the Ewer amendments carried unanimously.

Motion: REP. EWER MOVED HB 308 DO PASS AS AMENDED.

Discussion:

REP. SHIELL ANDERSON referred to lines 21-22 and stated his concerns regarding giving the county commissioners a lot of latitude. He said this appears to be a turf war and the way the bill stands now he could not vote for it. **REP. EWER** asked if he was proposing an amendment striking out H & I of the bill; location of district and property. **REP. ANDERSON** asked if they were to strike Section 5 in its entirety, what else would they have to strike. **REP. EWER** explained the concept in Title 7. In special improvement districts they talk about benefit but they don't define it. The attempt of this bill is to put some definition on it. **REP. EWER** said he would like to try and agree what the right parameters would be for determination of benefit.

REP. TONI HAGENER stated as a former county commissioner frequently involved with water and sewer districts and others, she finds this a very valuable bill and supported it. She said under the fiscal impact it gives the additional authority to ensure collection. Regarding the concern of county commissioners making the determination, that clause also says "or board of directors of a district." The reason there is an alternative is the water district may have been formed many years ago and they may not have an active board of directors. This gives an alternative of action. **REP. HAGENER** said she feels offended that local government officials are constantly assaulted by people thinking they don't know what they are doing. They are dealing directly with the issues, directly with the people and sit directly across the table from them, have to respond to them and justify their taxation and what they are doing.

REP. BOB KEENAN said this is a local situation for him in his district and he can see the benefit of this bill as well as a threat within this bill from an overly aggressive water and sewer board of which he has in his town. He said he wants to make sure he can protect the people along the truck line between two hubs. He also wants the developers who are along the trunk line and inside the district to pay their fair share. **REP. HAGENER** explained if he has an overly aggressive board, put some limitations. The necessity and the mandates to meet various construction and development is very important and a system is needed where the money can be successfully collected. **REP. HAGENER** said this bill is a real necessity.

REP. KEENAN referred his question to **REP. EWER** who said Section 5 could be modified. One of the most essential elements of this bill is the issue of whether or not it's appropriate to charge property that is benefited. The fear of is it fair and will there be a tyranny of this board. He said he can't speak for what local and water and sewer districts will do in every case. The benefits outweigh the potential for the tyranny. It is essential for water and sewer districts to plan accordingly. **REP. KEENAN** said he has always encouraged the people in the water and sewer districts to exercise their right to vote. More

encourages participation in school board elections and district elections. **REP. EWER** said if there is a new water and sewer district they get to vote. Also, the bill says they can only charge the assessments on debt, on facility charges that have been voted by the people. People can make their case if they feel they are not benefited.

REP. ANDERSON addressed **REP. HAGENER** comments.

REP. KEENAN referred to page 5, line 8-9 and said the most important thing is they will be charging property for the availability of services and not just the use.

REP. HERRON asked about the time frame of the bill taking effect immediately instead of October. **REP. EWER** said it would be fine to make it October.

Vote: **Motion carried 16-2 with REP. ANDERSON and REP. DENNY voting no.**

EXECUTIVE ACTION ON HB 261

Motion: **REP. LINDA MCCULLOCH MOVED HB 261 DO PASS.**

Discussion: **REP. JOHN BOHLINGER** spoke in opposition to the bill and said he doesn't feel that rent stabilization or control is going to make more space available and it would be a poor policy for the state of Montana. There have to be incentives to bring developers into play.

REP. MCCULLOCH spoke in favor of HB 261 saying rent stabilization is a matter of local control option and how mobile home courts filled to capacity and the owners taking advantage knowing there are shortages and they have no where else to go and they continue to raise the rent.

REP. MILLS spoke in opposition saying rent control is a dis-incentive for the property owner to keep up his property. He said what needs to be done is change the zoning laws and make it so people can build more spaces which they would if zoning laws were changed.

REP. ANDERSON said he doesn't like artificial loss on the market system and it is unfair to single out mobile home park owners for rent control.

Motion/Vote: **REP. ANDERSON MOVED TO TABLE HB 261. The motion carried 14-4 with REPS. HAGENER, MCCULLOCH, SHEA, and TROPILA voting no.**

EXECUTIVE ACTION ON HB 358

Motion: **REP. ANDERSON MOVED TO RECONSIDER HB 358.**

HOUSE OF REPRESENTATIVES

Local Government

ROLL CALL DATE 2-16-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bill Boharski, Chairman	✓		
Rep. Jack Herron, Vice Chairman, Majority	✓		
Rep. David Ewer, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Shiell Anderson	✓		
Rep. Ellen Bergman	✓		
Rep. John Bohlinger	✓		
Rep. Matt Brainard	✓		
Rep. Matt Denny	✓		
Rep. Rose Forbes	✓		
Rep. Toni Hagener	✓		
Rep. Bob Keenan	✓		
Rep. Linda McCulloch	✓		
Rep. Jeanette McKee	✓		
Rep. Norm Mills	✓		
Rep. Debbie Shea	✓		
Rep. Joe Tropila	✓		
Rep. Diana Wyatt	✓		

HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Mr. Speaker: We, the committee on **Local Government** report that **House Bill 308** (first reading copy -- white) **do pass as amended.**

Signed: Wm E Boharski
Bill Boharski, Chair

And, that such amendments read:

1. Page 3, line 13.
Following: "facilities."
Insert: "In establishing and imposing the facilities charge, the board may use any one or a combination of the methods of assessment applicable to rural special improvement districts as provided in 7-12-2151."

2. Page 3, line 18.
Following: "(4)(a)"
Insert: "A district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of this subsection (4)."
Following: "services"
Strike: "incurred"
Insert: "is due and payable"

3. Page 5, line 20.
Strike: subsection (g) in its entirety
Renumber: subsequent subsections

4. Page 5, line 23.
Following: "by other"
Insert: "like"

-END-

Committee Vote:
Yes 16, No 2.

411232SC.Hbk

ROLL CALL VOTE

Local Government

Amends

DATE 2-16-95 BILL NO. 308 NUMBER _____

MOTION: Ewer DO Pass as Bill

Ewer DO Pass Amendments

" " " AS.

NAME	AYE	NO
Rep. Bill Boharski, Chairman		
Rep. Jack Herron, Vice Chairman, Majority		
Rep. David Ewer, Vice Chairman, Minority		
Rep. Chris Ahner		
Rep. Shiell Anderson		
Rep. Ellen Bergman		
Rep. John Bohlinger		
Rep. Matt Brainard		
Rep. Matt Denny,		
Rep. Rose Forbes		
Rep. Toni Hagener		
Rep. Bob Keenan		
Rep. Linda McCulloch		
Rep. Jeanette McKee		
Rep. Norm Mills		
Rep. Debbie Shea		
Rep. Joe Tropila		
Rep. Diana Wyatt		

ROLL CALL VOTE

Do Pass

Local Government

DATE 2-16-95 BILL NO. 308 NUMBER

MOTION: Ewer - Do Pass As Amended

Wyatt ?

NAME	AYE	NO
Rep. Bill Boharski, Chairman	✓	
Rep. Jack Herron, Vice Chairman, Majority	✓	
Rep. David Ewer, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	
Rep. Shiell Anderson		✓
Rep. Ellen Bergman	✓	
Rep. John Bohlinger	✓	
Rep. Matt Brainard	✓	
Rep. Matt Denny		✓
Rep. Rose Forbes	✓	
Rep. Toni Hagener	✓	
Rep. Bob Keenan	✓	
Rep. Linda McCulloch	✓	
Rep. Jeanette McKee	✓	
Rep. Norm Mills	✓	
Rep. Debbie Shea	✓	
Rep. Joe Tropila	✓	
Rep. Diana Wyatt	✓	

2

investment policy but may not have been appropriate. He attempted to use only objective and discrete language that would not allow for judgement calls. He said that five years was adequate and he wanted to cut some slack to the local governments.

Closing by Sponsor:

REP. EWER closed.

HEARING ON HB 308

Opening Statement by Sponsor:

REP. DAVID EWER, HD 53, Helena, presented HB 308 which proposed changes to the county and water and sewer districts. He discussed how water and sewer districts were formed and some of the problems with water and sewer districts. He said that one of the major perks of HB 308 was to preserve water and sewer financing on a cost effective basis. HB 308 tried to clarify how water and sewer districts can operate and finance their infrastructure so that they can get into the market of selling bonds. Architecture and engineering services could be retained and paid for through assessments according to HB 308. The board shall review every two years the adequacy of the rates and charges under HB 308 to cover the expenses. The board may also establish charges for properties benefitted by the facilities. Regardless if a bond was voted on by the people to finance infrastructure, people would pay the charges even if they do not use the facility. Charges would not be able to be assessed for ongoing usage but they would have to pay if the facility should be there. The charge had to come from the voted bonds and there was due process available. He said that if people could decide whether they had to pay or not, a swiss cheese effect would result and bonds would not be able to be sold. **REP. EWER** compared water and sewer bonds to SID's and RSID's. The assessment of charges where created from 7-12-2151. He pointed out that delinquent payments could be taxed against the property but was optional. On page four, the bill was amended so that in regards to mobile homes with delinquent payments, the lien would go against the mobile home owner. He pointed out that criteria for what it meant to be benefitted was stricken from the bill. HB 308 also provided water and sewer districts with the ability to issue general obligation bonds and issue refunding bonds without elections. He stated that managing the growth in Montana, local governments needed tools to provide infrastructure and without these types of tools, there would be haphazard growth.

Proponents' Testimony:

Dick Labbe, Mayor of Deer Lodge, encouraged the committee to pass HB 308. He gave an example of a subdivision just outside of the Deer Lodge city limits and they had been unable to pass laws to

govern the area because it was in the county. The subdivision requested to hook onto the city infrastructure and two of the developers had gone bankrupt. The city had been trying to help them as there had been some growth but no building sites. HB 308 would provide them with a better vehicle to accomplish what they wanted to do.

Bobby Broadway, Sun Prairie Village County Water and Sewer District Manager, presented his written testimony **(EXHIBIT 2)**.

Dan Keil, a farmer from North Central Montana, stated that he was a member of the Taver County Water District which included five counties. He noted they had various problems collecting bills. He also served on the Montana Rural Water Systems and HB 308 was a bill like that of previous bills they tried to get passed. He said they would like to see the water district laws expanded to be treated equally with other financing. He presented the committee with a letter and petition from the Montana Rural Water Users **(EXHIBIT 3)**.

Arnold Peterson, representing the North Havre County Water District and the Montana Association of Rural Water Districts, stated that HB 308 fairly addressed the concerns they had for rural water districts and urged the passage of the bill as amended.

Anna Miller, Department of Natural Resources, testified that the Department had two lending programs for communities, the coal severance tax bond program, and the state waste water revolving fund program. The Department felt this was good legislation and gave flexibility and direction and asked the committee's support.

John Shontz, representing the Montana Association of Realtors, strongly urged the committee's support of HB 308. Their reasons were to get away from using SID's and RSID's and that if your property was benefitted even though it may not be hooked up, the value of the property would go up. He stated this was fair legislation and he urged a do pass recommendation.

Mae Nan Ellingson, an attorney with Dorsey & Whitney, stated she acted as the scribe for the people who worked on the bill. She prepared a summary for the committee of HB 308's provisions **(EXHIBIT 4)**.

Opponents' Testimony:

Barbara Lietz, Martin City, presented her written testimony opposing HB 308 **(EXHIBIT 5)**. She also read a letter from a gentleman from Hungry Horse and submitted a petition against HB 308 **(EXHIBIT 6 & 7)**.

Donna Meskimen, Martin City, opposed HB 308 and if it was to be amended it would strengthen the rights of the people served.

{Tape: 2; Side: A; Comments: .}; Approx. Counter:

Questions From Committee Members and Responses:

SEN. HARGROVE asked **REP. EWER** to respond to **Ms. Lietz** concerns. **REP. EWER** said he tried to list the nine points the opponents mentioned. The first being who would hire the engineers or architects and he responded that the trustees should be able to hire them. The inability to protest he felt was unfounded because there were many areas that give the due process to protest. If a person does not like the way the trustees run the district, they could be voted out. He did not share the opposition expressed and he felt HB 308 was very fair. The problem of being able to charge people on an AD HOC basis was not true and there was a misunderstanding. The charges would be assessed against benefitted property like and other district. He felt it was fair that if you could have access to a facility 10 months down the road you should be charged because there was plenty of ability to protest.

SEN. HARGROVE mentioned the mobile home section and asked **REP. EWER** to comment as the committee had a bill earlier with similar wording that was amended out. **REP. EWER** said that he reluctantly agreed with the amendment put into the bill on mobile homes.

CHAIRMAN BECK expressed concern about the mobile home amendment along with the concerns of **Ms. Lietz**. He said that he did not know of any mobile home court where the home owns the sewer and water units under the ground. He felt the charges would have to be passed on to the mobile home owner from the property owner. **REP. EWER** agreed but in order to save his bill he had to agree to the amendment in the House.

CHAIRMAN BECK asked if the amendment was taken out if **REP. EWER** would have trouble getting his bill passed. **REP. EWER** said he would lose the bill if the amendment was taken out.

CHAIRMAN BECK said he did not want to put him in that position but did have some concerns in that area. He did say he like the bonding procedure in the bill. **REP. EWER** said that if the bill would get amended and ended up in conference committee, he felt the essence of the bill would be lost.

Closing by Sponsor:

REP. EWER closed.

MONTANA SENATE
1995 LEGISLATURE
LOCAL GOVERNMENT COMMITTEE

ROLL CALL DATE 3-9-95

NAME	PRESENT	ABSENT	EXCUSED
DOROTHY ECK	✓		
SHARON ESTRADA	✓		
DELWYN GAGE	✓		
DON HARGROVE	✓		
J. D. LYNCH	✓		
JEFF WELDON		✓	
ETHEL HARDING, VICE CHAIRMAN	✓		
TOM BECK, CHAIRMAN	✓		

SEN:1995
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CS-09

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 2
DATE 3-9-95
BILL NO. HB 308

TESTIMONY
Before
SENATE STANDING COMMITTEE ON LOCAL GOVERNMENT

Reference: House Bill 308
"AN ACT REVISING LAWS RELATING TO COUNTY WATER AND SEWER DISTRICTS;..."

March 9, 1995

Mr. Chairman,

Members of the Committee

For the record, my name is Bobby Broadway. I am the manager of the Sun Prairie Village County Water and Sewer District. I am also on the Board of Directors of the Montana Association of Water and Sewer Systems, representing 38 water and sewer systems, 10 of which are water and sewer districts.

My Board of Directors and my Association, fully support HB 308 and urge this committee's approval and support.

House Bill 308 is an effort to clarify existing statute. More specifically the clarifying a district's responsibilities and powers and so that they are clear and understandable.

Under current statutes, districts have no means of collecting user fees which are delinquent, other than termination of services. Shutting off water is usually an effective means, however, there are those instances where individuals will haul water and continue to use sewer services which are not easily shut off. In my district we have had individuals who ran water hoses from neighbors homes rather than pay the water bill after being shut off. Filing charges of theft of services did no good as the sheriff's department said there was nothing they could do. We have had such situations last for more than a year before a resolution was reached. The lien proposed in this bill will give district's a means of collecting from property owners who evade normal collection procedures or vacate their properties owing outstanding charges. The bill very adequately addresses concerns regarding due process by giving property owners every opportunity to protest should they feel that a lien is unjust.

A district has an obligation to pursue all delinquent charges vigorously to provide equity to those users who pay regularly and consistently for the services they receive. It becomes an issue of fairness as well as economics.

My own district has written off thousands of dollars in bad debts over the years because we have not had a workable and distinctly clear method to ensure collections, other than shutting off water.

The new section on issuance of general obligation bonds is needed to provide an additional means for financing capital improvements to water or wastewater systems. Currently the only methods available to a district is to collect for replacement and depreciation, sell revenue bonds, or secure grants from outside sources. We are not asking, in this bill, anything which is not approved by the vote of the electorate.

Thank you for your time and I again urge your support for this bill.

SENATE LOCAL GOVT. COMM.
EXHIBIT 3
DATE 3-9-95
BILL NO. HB 308

DATE: February 16, 1995

TO: Governor Marc Raciot

FROM: Montana Rural Water Users

Dear Sir,

For many years County Water Districts in Montana have had a problem. When a Water District is formed, the people within the bounds of the District petition to be included. Once the District is formed and the system is constructed, the debt obligation must be repaid. Under present statutes, unless an owner of a piece of property within the District actually hooks onto the system, there is no way to charge this individual his proportional share of the construction costs. Also, if a user does not pay his water or sewer bill, the District has no way to put a lien on the property to recoup construction fees.

Montana Rural Water Users has initiated a Bill to correct this situation. It is HB308 and sponsored by David Ewer. This Bill seems to be hung up in Committee and we ask that you do what you might be able to help us get this bill up and going. There are 65 County water and sewer Districts in Montana. Sixty one of these Districts are members of Montana Rural Water Systems and request that you support us in this effort.

Exhibit 3 includes 6 pages of signatures. The original is stored at the Historical Society at 225 N. Roberts St., Helena, MT 59620-1201. The phone number is 444-2694.

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 4
DATE 3-9-95
BILL NO. HB 308

DORSEY & WHITNEY
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
127 EAST FRONT STREET
SUITE 310
MISSOULA, MONTANA 59802
(406) 721-6025
FAX (406) 543-0863

MAE NAN ELLINGSON

MINNEAPOLIS
ROCHESTER, MN
BILLINGS
GREAT FALLS
DES MOINES
DENVER

NEW YORK
WASHINGTON, D. C.
ORANGE COUNTY, CA
FARGO
LONDON
BRUSSELS

MEMORANDUM

TO: Members of Senate Local Government Committee

FROM: Dorsey & Whitney
Mae Nan Ellingson Mae Nan Ellingson

DATE: March 9, 1995

RE: House Bill 308

House Bill 308 is the result of an effort over the last biennium by many individuals and groups in the state involved with public water and sewer systems and their financing, including among others the Water and Sewer Agencies Coordination Team (WASACT), to identify and propose solutions to some of the problems faced by county water and sewer districts under existing state statutes. The purpose of HB 308 is to systematically clean up troublesome and archaic provisions in the county water and sewer district law and to provide districts with greater flexibility in providing the services that they have been created to provide. A brief discussion of each section follows.

SECTION 1. SECTION 1 amends Section 7-13-2218 to clarify two important issues:

(1) To make it clear that once the voters in a proposed district have voted to create a district, the board of directors of that district is authorized to contract for engineering services for the preliminary design of a system and assess those costs against properties in the district; and

(2) To more clearly state the ordinance making power of a district. Section 7-13-2275 M.C.A. currently contemplates the enactment of ordinances and resolutions by spelling out how ordinances and resolutions are to be enacted, but doesn't specifically grant the power to enact ordinance nor specify the subject matter for

such ordinances and resolutions. Section 7-13-2301 M.C.A. currently specifies that the board of directors shall fix all water and sewer rates, and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users. The general grant of powers section (Sections 7-13-2218 and 7-13-2221 M.C.A.) does not clearly state that the board has the power to establish and prescribe the rules and regulations with respect to the use and operation of a system, i.e., prescribe procedure for termination or service, payment of hook-up fees and the like. This section makes it clear that ordinances and resolutions are the proper manner by which the district establish the rules, regulations, rates and charges.

It should be noted that before a district board can enact an ordinance, resolution or regulation all provisions of the open meeting law, i.e., notice. opportunity to comment, public meetings must be observed, and that ordinances are subject to initiative and referendum.

SECTION 2. Section 2 amends Section 7-13-2301 and contains the most significant changes in the legislation: greater flexibility in assessing costs for improvements and how delinquent charges are collected.

Costs of Improvements. The purpose of the changes in subsections (1) through (3) is to give greater flexibility to water and sewer district boards in structuring how the property owners in a district will pay for the costs of capital improvements constructed within that district. Under current law, as it is most frequently interpreted, costs of capital improvements, as well as costs of operation and maintenance, can only be paid for from "user fees" and then to the extent that those are inadequate, a deficiency tax levy on all property in the district. This has created difficulties in many districts, particularly those where there is undeveloped land and where it was either required or prudent to design the capital improvements to provide service and capacity for those properties once developed. Not being able to assess a portion of the costs of capital improvements against benefitted property has resulted in extremely high monthly charges for the initial users.

Section 7-13-2301, as amended, would allow a district to impose a facilities charge (not an operations and maintenance charge) against all property in the district which is benefitted by the improvements, whether connected to the system or not, if the voters of the district have authorized the construction of the improvements. The lack of this option has resulted in extremely high costs to

EXHIBIT 4
DATE 3-9-95
HB 308

users, as mentioned before, or in an effort to avoid that result, water and sewer districts requesting that the county create a special improvement district within or over the boundaries of the water and sewer district since under a special improvement district all benefitted property can be assessed for its share of the cost. Having multiple jurisdictions like this significantly complicates matters and significantly increases the costs of providing the improvements.

It should be noted that under this provision there would have to be an election within the district in order to charge benefitted property, whereas under the special improvement district route, an election is not required (although a majority can protest the creation of the district).

Collection of Delinquent Charges. Subsection (4) of Section 2 would enable a district, if it elects to do so, to place delinquent water or sewer charges as a lien against the property and have those collected as a tax.

The ability to disconnect service for nonpayment is not an adequate tool for a district to ensure the prompt payment of utility bills, particularly charges for sewer where disconnection is difficult, if not impossible, and disconnection might result in unsanitary conditions. Being able to place delinquent utility charges as a lien is common practice in other states. Currently in Montana, cities and towns are authorized by law to do so for delinquent sewer charges and county solid waste district districts are authorized by law to do so for delinquent solid waste charges.

Several points need to be made about this. This ability to collect delinquent charges in this manner becomes especially important if benefitted land which may be undeveloped is charged a facilities charge since the threat of disconnection is no threat at all. Second, if a special improvement district were used to pay for the capital costs, each benefitted property's share of the total capital costs, not one years assessment, becomes a lien against the property at the time of creation. Here we are only proposing that the annual delinquency become a lien. And finally, currently if the district revenues are inadequate in any year as a result of certain property owners not paying their charges, a deficiency tax levy has to be imposed on all property in the district to make up the deficiency. Those property owners who have paid their fees and charges have to pay again a pro rata share of the deficiency levy. Giving a district some additional tools to collect delinquent charges helps keep the costs down for those people who pay their bills when due.

SECTION 3. Section 3 which amends Section 7-13-2321 attempts to clear up an ambiguity and make it clear that an election is not required for a district to issue refunding bonds. This would make the authority of water and sewer districts to issue refunding bonds more consistent with that currently of cities and counties and school districts which do not have to have an election to refund the outstanding debt.

SECTION 4. The primary purpose of Section 4 which amends Section 7-13-2324 is to reduce the costs that a district incurs in publishing the notice of the election. Currently, the law requires that the entire resolution calling for the election be published in the newspaper. That resolution must contain many things including the entire legal description of the property in the district. Often these resolutions are 10 pages long, resulting in exorbitant publication costs, since the notice of election has to be published three separate times. This section as amended will still provide adequate notice of the election to the district electors in that it requires that the notice set forth the essential elements of the election, i.e., when, where, purpose, dollar amount, term over which the debt is to be paid, and other matters the district deems relevant. This is consistent with bond issuing procedures for cities, counties and school districts.

SECTION 5. Section 5 of the bill as currently amended would authorize the district, upon approval of the voters of the district, to issue general obligation bonds to pay for the costs of capital improvements. The current bonding provisions of the county water and sewer district law allow the issuance of what are referred to as tax backed revenue bonds. The use of a general obligation mechanism can be of value to certain districts that simply want to spread the costs of the improvements on an ad valorem property tax basis and collect these amounts twice a year. This seems particularly important to smaller districts with minimal staffs for whom monthly, quarterly bills are difficult to send and collect, and the calculation of charges based on benefit may appear too onerous. It should be noted that general obligation bonds can only be issued if approved by the voters in the same manner as school district bonds, and it would be clear in the election proceedings that the bonds would be general obligations payable from a tax levy, rather than revenues of the system.

SECTION 6. Section 6 establishes the procedure for issuing refunding bonds.

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 5
DATE 3-9-95
BILL NO. HB 308

TO: Senate Comm. on Local Government

RE: HB308 Opposition of

I am here representing myself as a consumer and as a bookkeeper for a District for 12 years. I am also representing the Board of Directors of Montanans for Property Rights.

Water is a necessity of life. Districts already have a monopoly in controlling this very important commodity. Water should be provided at an affordable rate, to the community it serves. If this Bill is to pass, it will be a flagrant abuse of the consumers rights and private property rights.

It gives the Board of Directors the power to:

* Hire ~~personel~~ Personnel to study and engineer a system, with the cost charged to the property owner.
    * It does not require notification to the property owners, who would be expected to pay the bill
    * No provisions to protest this action
    * No cap on amount that can be spent

Districts currently have the authority to work through the County to achieve this, with the protections built in for the property owners by utilizing MCA 7-12-21

* Charge for the AVAILABILITY OF FACILITIES AND BENEFITS DIRECTLY OR INDIRECTLY AFFORDED, because expenses may be more than the revenues
    * Board of Directors determines who meets this criteria-leaves it open to "pick & choose"
    * No requirement for public hearing before setting charges, or notification to the property owners
    * Property owner could be charged for INDIRECT BENEFITS, meaning there would not even have to be a main line accessible

District have the authority to place any shortfall as a Tax Levy on ALL PROPERTY WITHIN THE DISTRICT MCA 7-13-2221 & 7-13-2302 By using this existing laws, while unpopular, is fair and equitable.

* Collection of deliquent charges as a TAX LIEN
    * No provisions for property owner to protest or dispute the charges
    * If the bill was for a renter or a previous owner, it falls to the owner or current owner to pay the bill
    * Only recourse for the property owner is to pursue this as a civil matter, after the damage is done by the filing of a Tax Lien

Services of the Credit Br. and small claims courts are available to pursue collection of unpaid bills. There is also the option of requiring a deposit at the time of registration. Again, if charges are for availability or preceived benefits, the District has the right to levy a tax. It should be noted that security deposits held by a landlord cannot be used to pay an unpaid water/sewer bill MCA 7-25-101 to 103.

As for Sections 4 through 6, dealing with Bonded Indebtedness and refunding bonds, I would like to withhold comment at this time, I have not been able to study the issue close enough to fully understand the implications it may have.

Respectfully submitted,

Barbara Lietz

Barbara Lietz
Martin City, Montana

March 7, 1995

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 6
DATE 3-9-95
BILL NO. HB 308

Having been a board member of a small water district I was made aware of some disturbing facts. One being the fact that the consumer is at the mercy of the Board and has no recourse but to bow to the demands of the Board. Rules can be made to fit nearly any circumstance.

I feel that HB 308 only increases the power of the water board over its ~~clients~~ consumers.

I also feel there should be some firm rules for all water districts ... the state to make be making

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 7
DATE 3-9-95
BILL NO. HB 308

We, the undersigned citizens of the State of Montana, strongly oppose HB308, which would allow County Water &/or Sewer Districts to Charge for the AVAILABILITY OF FACILITIES; Hire architects or engineers to design, do a study, plans, and specs for a system with the cost put against the property in the District or the area BENEFITED; Set rates, fees, tolls, rents, and other charges for services, FACILITIES AND BENEFITS DIRECTLY OR INDIRECTLY AFFORDED BY THE FACILITIES; Collection of delinquent charges as a TAX LIEN upon the property or mobile home; Would not require a vote of the people in the District to incur a Bonded indebtness under certain circumstances.

PRINTED NAME	ADDRESS	SIGNATURE
SANDRA L. PIETERICK	Box 23 Hungry Horse	Sandra L. Pieterick
Lenna Larsen	#6 South 1st Ave H.H.	Lenna Larsen
Carolyn Alvarez	P.O. BOX 253 H.H. MT 59919	Carolyn Alvarez
Chuck Bailey	P.O. 458 H.H. MT	Chuck Bailey
Travis Heston	Box 253 HH, MT	Travis Heston
Irvin Hoffman	Box 1785 Columbia Falls	Irvin E Hoffman
Gertrude Seliger	Box 190094 H.H.	Gertrude Seliger
Laurel TALLMAN	P.O. Box 190562 H.H.	Laurel Tallman
JEFF JOHNSON	PO Box 90202 HH	
Julia Schrader	210 3rd Ave. W. C.F.	Julia A. Schrader
ARLENE M. WHITE	P.O. Box 217, Hungry Horse MT 59919	Arlene M White
Hope J. Rowe	P.O Box 1154 Col. Falls	Hope J. Rowe
THOMAS, O. CLAY	Box 260389 Martin City MT 59926	Thomas O. Clay
E. J. WEILAND	BOX 260374 MARTIN CITY	E. J. Weiland
Mary M. Whitaker	Box 190205 Hungry Horse, MT	Mary M. Whitaker
Joe Ruby	Box 938 Martin City	Joe Ruby
NANCY LANDELL	Box 343 CORAM	Nancy Landell
Randy Hendrickson	P.O. Box 581	Randy D Hendrickson
Bob Fabian	1146 Echo Lake Rd Big Fork	Bob Fabian
Kelli Elliott	P.O. Box 190693 Hungry Horse	Kelli Elliott

We, the undersigned citizens of the State of Montana, strongly **oppose HB308**, which would allow County Water &/or Sewer Districts to Charge for the AVAILABILITY OF FACILITIES; Hire architects or engineers to design, do a study, plans, and specs for a system with the cost put against the property in the District or the area BENEFITED; Set rates, fees, tolls, rents, and other charges for services, FACILITIES AND BENEFITS DIRECTLY OR INDIRECTLY AFFORDED BY THE FACILITIES; Collection of delinquent charges as a TAX LIEN upon the property or mobile home; Would not require a vote of the people in the District to incur a Bonded indebtness under certain circumstances.

PRINTED NAME	ADDRESS	SIGNATURE
Lietz	415 Central ave. Martin City	David E. Lietz
MYERS	EVERGREEN WATER Bx 2955 Kalispell MT	Deborah A Myers
Lietz, Barb	59913-0248	Barbara Lietz
MESKIMEN, DONNA	BX 190554 Hungry Horse MT 59919	Donna Meskimen
Meskimen	PO BOX 190554 Hungry Horse, MT.	Thomas A. Meskimen
SERBA	P.O. Box 130025, CORAM, MT. 59913	Raymond P. Serba Sr.
Hilde	P.O Box 260415 Martin City 59926	James D. Wilde
BEACH	Box 260135 Martin City	Bobbi Kay Beach
Broers	Box 406 Hungry Horse 59919	Henry Broers
ART PHELPS	BOX 190457 HUNGRY HORSE 59919	Carolyn F. Phelps
Lee	Bx 190391 Hungry Horse MT	Debra A. Lee
Lee	Bx 190391 Hungry Horse MT	Cameron E. Lee
Torpen	Bx 260326 Martin City MT	[illegible]
[illegible]	Byo 8 Martin City	[illegible]
CHARLES TUSTIN	BOX 130112 CORAM MT	Charles Tustin
Jim Dowling	P.O. BOX 190520 Hungry Horse	Jim Dowling

DATE 3-9-95

SENATE COMMITTEE ON LOCAL GOVERNMENT

BILLS BEING HEARD TODAY: HB 197 HB 220
HB 249 HB 308

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
BARB LIETZ	SELF MT FOR Property Rts.	HB 308		✓
DEBORAH Myers	SELF	HB 308		✓
DONNA MESKIMEN	MARTIN CITY WATER DIST	HB 308		✓
Tom Meskimen	Martin City	HB308		✓
Jim Wysocki	City of Bozeman	HB249	✓	
Blake Wordal	Lewis & Clark Co	HB197	✓	
Sandra Ftzinger	MT Assn of Counties	HB197	✓	
Jim Reardon	MT Dept of Trans	HB249	✓	
Carl Harrington	Mt County Treasurer	HB197	✓	
R Tabb	City of Deer Lodge	HB 308	✓	
Gerald Peterson	North Powder County Rural Water	HB308	✓	
Bruce MacKenzie	DA Davidson / SIA	HB197	✓ w/amend	
NATHAN TUBERGEN	City of Billings	HB220	✓	
GARY GILMORE	MONT DEPT TRANS	HB249	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Robert White	Bozeman Chamber	HB249	✓	
Lonnie Kurtz	Montana Rural Water Syst	HB 305	✓	
Bobby Bradshaw	Sun Prairie Village Water & Sewer	HB308	✓	
J. Shontz	MT Assoc. REALTORS	308	✗	
Mae Nan Ellingson	Dorsey & Whitney	HB 308		
Mae Nan Ellingson	Dorsey & Whitney	HB 197		
Anne Miller	DNRC	HB 208	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SEN. GAGE did not because there may not anyone protesting and if the approved language was used, you would have to go out and get the approval of the majority. This way if they are opposed, they can go out and get the signatures.

SEN. J.D. LYNCH said that the reverse was true because if you had to go out and get the majority of the people to sign and protest in writing, there is a great deal of work. He preferred the method as "approved".

CHAIRMAN BECK presented the scenario of changing from a user fee to ad valorem and one person owned a lot of ground and could not get a majority of the protestors but if they went to the ad valorem he would pay more tax.

Vote: THE MOTION FAILED. (SEE ROLL CALL VOTE NUMBER 1).

Motion/Vote: SEN. LYNCH MOVED HB 220 BE TABLED. THE MOTION CARRIED. (SEE ROLL CALL VOTE NUMBER 2).

EXECUTIVE ACTION ON HB 308

Motion: SEN. JEFF WELDON MOVED HB 308 BE CONCURRED IN.

Discussion:

SEN. WELDON stated that issued raised in the hearing and Mae Nan Ellingson wrote a letter to the committee with amendments that have been prepared for the committee.

Motion: SEN. WELDON MOVED THE AMENDMENTS BE ADOPTED.

Discussion:

SEN. WELDON asked the sponsor **REP. DAVID EWER** to explain the amendments.

REP. EWER asked for some time to look over the amendments before commenting.

SEN. LYNCH suggested that those opposed to the bill that someone explain to him why the opposition and then if the amendments would take care of the opposition.

CHAIRMAN BECK said that there were three opponents to the bill who gave him information on why they opposed HB 308 **(EXHIBIT 1)**. He also had personal objections about assessing against the trailer homes versus the land owner.

SEN. LYNCH said that did not make sense to him either and he thought the amendments took care of that as that was his objection to the bill.

CHAIRMAN BECK passed around petitions from people who were against HB 308 **(EXHIBIT 2)**.

SEN. WELDON had two points about the opposition. The letter from Mae Nan Ellingson specifically addressed the concerns raised by Barbara Leitz.

SEN. LYNCH wanted to know the rational why a person in a trailer should be assessed the fee rather than the person who owns the land. The trailers can be very transient.

SEN. HARGROVE said that it was his understanding that the public did not object.

CHAIRMAN BECK said that the sponsor said if that amendment was taken out the bill would be dead in the House.

REP. EWER said that **REP. WAGNER** from Hungry Horse had three objections to the bill but honored only two of the amendments. **REP. EWER** did not like the amendment dealing with mobile homes and encouraged the committee to strip the mobile homes out of the bill but he did not believe the House would accept the amendment.

SEN. WELDON said that the motion on the table is on the amendments dated March 17, 1995 by Mae Nan Ellingson and the sponsor concurs with the amendments.

Vote: **THE MOTION CARRIED UNANIMOUSLY.**

Motion\Vote: **SEN. WELDON MOVED TO STRIPE THE HOUSE AMENDMENTS ON PAGE 4 SUB B. The MOTION CARRIED UNANIMOUSLY.**

Discussion:

CHAIRMAN BECK said the people from Big Arm wanted to look at page 2 line 15 after "of a water sewer system" insert "which will benefit 80% or more of the land located within". **CHAIRMAN BECK** asked **REP. EWER** if unapproved land will be assessed some sewer and water if there are no improvements on the land?

REP. EWER said that it has to be benefited and the assessment charges have to be voted debt. He continued that the opponents to the bill did not understand the issue well enough because the issue of benefitted property is well established in district and SID laws.

SEN. LYNCH said he did not understand that if the sewer line simply goes through someone's line but does not benefit them would they be assessed?

REP. EWER said that was part of the central philosophical issue of HB 308 and what it means to be benefitted. To be benefitted does not mean you had to be hooked up. There are all kinds of statutes where you pay your charge whether you use it or not. If

the sewer lines goes by your property your property value will increase.

SEN. LYNCH asked if you have a television district and you do not own a television would you have to pay? **REP. EWER** said you would still pay.

SEN. DOROTHY ECK asked about section 5 and if it should be reinserted.

Susan Fox said that the language was reinserted when they adopted the amendments so determination of benefit outlines through court decisions generally what was accepted as how you determine whether property is benefitted or not. In subsection 2 there were a lot of different factors that would help someone determine whether they may be benefitted or not.

REP. EWER said that originally what HB 308 did was put some parameters in for other types of districts.

SEN. ECK asked **REP. EWER** what kind of a group met to put this bill together? **REP. EWER** said that it was an effort from Montana Rural Water, a permanent group of people who are interested in water and sewer infrastructure issues, Water and Sewer Coordinating Task Force and Federal and State local officials.

SEN. GAGE asked the process of forming a water and sewer district? **REP. EWER** said that the process was to ask to form a water and sewer district and 51% have to protest.

SEN. GAGE asked if 51% of the land owners could form a district? **REP. EWER** said that in getting the debt, it would take 60% of a 40% voter turn out to approve the debt.

SEN. GAGE expressed his concern that protest from one area in the state while the rest of the state would benefit from a bill and because of one they would kill the bill.

SEN. WELDON asked if Hungry Horse, Martin City, and Curam were all in the same area? **SEN. GAGE** said they were.

SEN. WELDON agreed with **SEN. GAGE'S** point that the petition showed signatures from the same area and a petition **SEN. WELDON** received dated February 16, 1995 to the Governor showed support from East Helena, Great Falls, Absorkee, Ronan and others who have either been involved in the development of the bill or in the issue in their communities.

SEN. GAGE said that if he was representing those people in Hungry Horse and Curnam he would oppose the bill but they are not his constituents and his number one responsibility was his constituents and number two his state.

SEN. WELDON asked to what extent the amendments offset the concerns of the people in Hungry Horse? **REP. EWER** said that they offset some of the concerns partially in that the amendments provided for stricter language for notice of open meetings to be given. He did not understand some of the opposition to the bill so much as their own frustration with their situation in Hungry Horse.

SEN. WELDON said absence this bill which Mae Nan Ellingson described as a two or three year effort to update law, find solutions to problems faced under existing statutes and clean up troublesome and arcaic provisions. Absence this bill and the people he referenced earlier would have difficulties.

REP. EWER said that if the bill would not pass, the status quo would remain. The status quo being even though you benefitted you do not have to pay that stopped the process of being able to sell water and sewer district bonds which were much more cost effective than special improvement districts.

SEN. WELDON asked **REP. EWER** if his bill would erode the due process protection? **REP. EWER** said absolutely not and expands the notification process and water and sewer districts have to justify their rates and charges every two years.

Motion/Vote: **SEN. WELDON MOVED HB 308 BE CONCURRED AS AMENDED. THE MOTION CARRIED WITH CHAIRMAN BECK VOTING NO.**

EXECUTIVE ACTION ON HB 197

Motion: **SEN. WELDON MOVED THE AMENDMENTS TO HB 197 BY REP. EWER.**

Discussion:

SEN. GAGE asked **REP. EWER** to explain his amendments.

REP. EWER said the amendments make sure when refunding bonds, they are allowed to use the treasury obligations known as state local government securities that can only be subscribed to when doing advanced refunding. They had the same quality as direct obligations bills and agencies.

SEN. GAGE stated that there was a bill that referred to eligible securities. **REP. EWER** said that was this bill.

Vote: **THE MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **REP. WELDON MOVED HB 197 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 101

MONTANA SENATE
1995 LEGISLATURE
LOCAL GOVERNMENT COMMITTEE

ROLL CALL DATE 3-23-94

NAME	PRESENT	ABSENT	EXCUSED
DOROTHY ECK	✓		
SHARON ESTRADA	✓		
DELWYN GAGE	✓		
DON HARGROVE	✓		
J. D. LYNCH	✓		
JEFF WELDON	✓		
ETHEL HARDING, VICE CHAIRMAN			
TOM BECK, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Local Government having had under consideration HB 308 (third reading copy -- blue), respectfully report that HB 308 be amended as follows and as so amended be concurred in.

Signed: Sen Tom Beck
Senator Tom Beck, Chair

That such amendments read:

1. Title, line 5.
Following: "FACILITIES;"
Insert: "CLARIFYING THAT WATER AND SEWER DISTRICTS ARE SUBJECT TO OPEN MEETING REQUIREMENTS; PROVIDING FOR NOTICE AND FOR PUBLIC HEARINGS;"

2. Title, line 7.
Following: "JURISDICTION;"
Insert: "PROVIDING FACTORS FOR DETERMINING IF PROPERTY IS BENEFITED;"

3. Title, line 9.
Following: "7-13-2218,"
Insert: "7-13-2274, 7-13-2275,"

4. Title, line 10.
Following: "DATE"
Insert: "AND AN APPLICABILITY DATE"

5. Page 2, line 21.
Insert: "

Section 2. Section 7-13-2274, MCA, is amended to read:

"**7-13-2274. Conduct of business.** (1) All legislative sessions of the board of directors, whether regular or special, ~~shall~~ must be open to the public. Notice of the sessions must be given and the sessions must be held in compliance with the requirements of Title 2, chapter 3, parts 1 and 2.

(2) A majority of the board ~~shall constitute~~ constitutes a quorum for the transaction of business.

(3) The board ~~shall~~ may act only by ordinance or resolution."

Section 3. Section 7-13-2275, MCA, is amended to read:

"**7-13-2275. Procedure relating to ordinances and resolutions -- rates, fees, and charges established.** (1) The ayes and noes ~~shall~~ must be taken upon the passage of all ordinances

Amd. Coord.
Sec. of Senate

Sen. Gage
Senator Carrying Bill

681106SC.SPV

or resolutions and entered upon the journal of the proceedings of the board of directors. ~~No~~ An ordinance or resolution ~~shall~~ may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board ~~shall~~ must be in these words: "Be it ordained by the board of directors of .... district as follows:"

(3) All resolutions and ordinances ~~shall~~ must be signed by the president of the board and attested by the secretary.

(4) Prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or increasing rates, fees, or charges for services or facilities, the board shall order a public hearing.

(a) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must contain:

(i) the date, time, and place of the hearing;

(ii) a brief statement of the proposed action; and

(iii) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(b) The notice must also be mailed to all persons who own property in the district and to all customers of the district at least 7 days and not more than 30 days prior to the public hearing. The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution.

(c) Any interested person, corporation, or company may be present, represented by counsel, and testify at the hearing.

(d) The hearing may be continued by the board as necessary. After the public hearing, the board may, by resolution, impose, establish, change, or increase rates, fees, or charges.""

Renumber: subsequent sections

6. Page 4, lines 4 and 5.
Following: "~~The~~" on line 4
Strike: the remainder of line 4 through "THE" on line 5
Insert: "The"

7. Page 4, lines 6 and 7.
Following: "arrearage." on line 6
Strike: the remainder of line 6 through "HOME." on line 7

8. Page 6, line 2.
Insert: "

NEW SECTION. **Section 7. Determination of benefit.** (1) Under part 22 or this part, the county commissioners or board of directors of a district may, on the basis of whether the property is benefited by the facilities, determine whether or not to

include property in a district, to charge property for the use or availability of services, or to charge property for a particular bonded indebtedness.

(2) In determining if a property is benefited, the county commissioners or board of directors shall consider the following factors:

(a) whether the property is currently served by the facilities;

(b) whether the property would be served by the facilities if the owner elected to connect to the facilities;

(c) whether additional facilities are required to allow the property to connect to the facilities;

(d) whether additional facilities have been authorized or plans to authorize the additional facilities have been made and whether the additional facilities would be available within the next 3 years;

(e) the current use of the property;

(f) the permitted uses of the property under applicable zoning and land use regulations;

(g) any estimated increase in the market value of the property as a result of the facilities;

(h) the character and location of the district;

(i) the character and location of the property;

(j) whether the property is served by other facilities of the district or other public improvements; and

(k) any other relevant factors."

Renumber: subsequent sections

9. Page 6, lines 17 through 20.
Following: "district."
Strike: the remainder of line 17 through line 20

10. Page 7, lines 16 and 18.
Strike: "5 AND 6"
Insert: "7 through 9"

11. Page 7, line 20.
Following: "date"
Insert: "-- applicability"
Following: "."
Insert: "(1)"

12. Page 7, line 21.
Insert: "(2) Section 7-13-2301(2)(b) applies to bonds issued prior to, on, or after [the effective date of this act]."

-END-

SENATE LOCAL GOVT. COMM
EXHIBIT NO. 1
DATE 3-23-95
BILL NO. ~~offer~~ HB308

HB308

Last time I was here, I heard several comments about this bill and would offer the following comments in response. I do not pretend that I fully understood what was meant and still may be misunderstanding a couple of items:

1) Comparison of a Water/Sewer Districts to a TV or lighting District
   - -Apples and oranges
   - -TV & Lighting District are uncontrollable
   - -Water is controllable-goes where directed with main lines, service taps, fire hydrants

2) When a District is formed, everyone petitions to be
   - -Formed in Rural areas, generally in areas where a private system is or has failed or is no longer cost effective for owners to continue to maintain
   - -**10% of registered voters** in the boundaries of the proposed district puts the issue before the County Commissioners
   - -Notice is published and a public hearing is scheduled
   - -Protests can be forwarded, **BUT**, IT IS UP TO THE **DISCRETION** OF THE GROUP FORMING THE DISTRICT, wether to leave the boundaries as petitioned or to allow anyone out.
   - -Election is held

   ***MCA 7-13-2204 to 2215

3) Municipalities and County Water/Sewer Districts are the same
   - -Municipality is an incorporated town or city (MCA 7-1-4121(9))
   - -County unincorpaorated town or city, District is a seperate and distinct from a municipality (MCA 7-13-2201(3))
   - -If a Municipality changes rates, charges ect to raise more than a 12% increase in total annual revenues, must make application to the PSC (MCA 69-7-101 &102)
   - -District is not answerable to the PSC (MCA 69-3-102(2B) & attached letter

4) Neighbor, who is paying, servicing neighbor who is shut off for non-payment, with a hose.
   - -District policy generally states must be registered with the District to receive the services.
   - -Rules and Regulations should have something to effect that it is prohibited to service a separate unit via a hose.
   - -Neighbor shut off for non payment should be notified that if hose is not disconnected immediately, he will be charged with Theft of services: Neighbor who is supplying neighbor should be notified that the Rules prohibit the hose connection and to disconnect it or services to him will be discontinued.

5) If feel not benefiting--can petition to be excluded
   - -Have the right to petition to request exclusion **BUT**, it is a decision that is up to the Board of Directors.
   - -Majority of Board's deny the request on the grounds that to approve on must approve all and that would come down to exculding all that is vacant or unimproved

   ***MCA 7-13-2343 to 2345

PUBLIC SERVICE COMMISSION 1227 11th Avenue • Helena, Montana 59620
Telephone: (406) 449-3007 or 449-3008

...an Schneider Chairman
...n Driscoll
...ward Ellis
...ce Jarvis
...n Oberg

September 23, 1983

Ms. Deborah Sistek
Martin City Water District
Martin City
Montana 59926

Dear Ms. Sistek:

I have been informed that this Commission has sent your firm an annual report form and that as of this date this report has not been completed and filed with this Commission. It is my understanding that the Martin City Water Co., which was a privately owned public utility, was converted to a county water district in 1981, if this is true, then this Commission has no jurisdiction over the Martin City water utility.

During the 1983 legislative session the 48th Montana Legislature, passed amendments to Title 69, Chapter 7, MCA, that exempts County water and sewer districts from regulation by this Commission. With the passage of these amendments all county water and sewer districts have been exempted from compliance with any and all rules this Commission may have had relating to county districts, therefore, it is not necessary for your firm to file an annual report with this Commission.

If you have any questions relating to this matter please contact me at 449-3456.

Sincerely,

MONTANA PUBLIC SERVICE COMMISSION

Ron Woods

Ronald R. Woods
Rate Analyst
Utility Division

rrw/jb

EXHIBIT 1
DATE 3-23-95
HB 308

HB308

HIRING ENGINEERING SERVICES Page 2 (8)

Big misunderstanding between what "intent" is and how it can be interpretated

Ms. Ellingson indicates this is to allow the District to pay for the study of a new system and to have a mechanism to pay for it.

It can also be interpretated to include main line extensions or major improvements, with the cost assigned against properties in the district, in accordance to 7-13-2301.

If this were amended to be clearer and the mechanism to pay for it were to be distributed evenly, it would be easier to "swallow".

Perhaps something like:

insert page 2 line 13, after "of a water or sewer system" insert
"which will benefit 80% or more of the land located within"
insert page 2 line 14, after "in accordance with" insert "7-13-2302"

Add to 7-13-2302 to include:
7-13-2302 (1) (D) to read:

(d) of the amount of money required by the district for the purpose of retaining the services of architects and engineers for feasibility study of a new system,

Page 2, line 12 to 14 would now read:

(8) retain the services of architects and engineers for designing, preparing a feasibility study for and drawing plans and specifications of a water or sewer system which will benefit 80% or more of the land located within the district, with the cost of these services apportioned and assigned against properties in the district in accordance with 7-13-2302; and

and with 7-13-2302 (1d) added, it gives the district the mechanism to pay for it.

This would also leave the District in main line extensions of going to the property owners for approval of extending the line, such as utilizing the RSID law?

CHARGES FOR AVAILABILITY OF FACILITIES:

Ms. Ellingson's response to my comments states
- -enables district to spread costs of capital improvements as a facilities charge against properties that are benefitted by improvements
- -authority to levy taxes if expenses exceed revenues is already in the law
- -gives authority to assess a capital costs against benefitted property
- -matter of due process and equal protection, must apply the criteria equitably and uniformly
- -recommends reinserting NEW SECTION 5

Montana Rural Water Users letter to the Governor states: (copy of letter attached)
- -Under present statutes, unless an owner of a piece of property within the District actually hooks onto the system, there is no way to charge this individual his proportional share of the construction costs

To both, I can only comment:

It does give the authority to the Board to "pick and choose".

New Section 5 states:
- -shall consider the following
- --is it currently served, whether the property would be served IF the owner elected to do so, whether additional facilities have been authorized or if plans will authorize additional facilities within THE NEXT THREE YEARS, permitted uses, estimated increase in market value , character and location , served by other public improvements, any other relevant factors.

Districts may be bound by due process and equal protection and are suppose to apply the criteria equitably and uniformly, but if you feel you were not treated as such--your only recourse is by hiring an attorney and going to court, which will cost approximently 10,000 to 20,000 dollars. Which would be the lesser of two evils, going to court or just paying the bill???

If both are referring to bonded indebtedness, which was voted on, to allow the District to sell bonds to raise the money for a new system, and if the District is unable to met that obligation because they don't have the money to make the payments, then the law already allows the funds required to be levied as a tax. (MCA 7-13-2302 (a)) By using the laws already in place, it does not allow for "pick & choose", but would be spread among ALL who have property in the district, and it is already based on the TAXABLE MARKET VALUE.

I am totally against the Board of Directors having the authority to charge for Availability or benefits. I strongly recommend it be struck from the bill wherever it appears.

EXHIBIT 1
DATE 3-23-95
HB 308

DATE: February 16, 1995

TO: Governor Marc Raciot

FROM: Montana Rural Water Users

Dear Sir,

For many years County Water Districts in Montana have had a problem. When a Water District is formed, the people within the bounds of the District petition to be included. Once the District is formed and the system is constructed, the debt obligation must be repaid. Under present statutes, unless an owner of a piece of property within the District actually hooks onto the system, there is no way to charge this individual his proportional share of the construction costs. Also, if a user does not pay his water or sewer bill, the District has no way to put a lien on the property to recoup construction fees.

Montana Rural Water Users has initiated a Bill to correct this situation. It is HB308 and sponsored by David Ewer. This Bill seems to be hung up in Committee and we ask that you do what you might be able to help us get this bill up and going. There are 65 County water and sewer Districts in Montana. Sixty one of these Districts are members of Montana Rural Water Systems and request that you support us in this effort.

DELINQUENT CHARGES AS TAX LIEN

Ms. Ellingson's comments:

-did not elaborate on the policy issues behind allowing this.
-Precedent for including are 7-13-3042, 7-13-4309, and 7-13-234

While I admit I am working with the 1991 set of MCA's, I offer the following, with assurances, I will look it up when I arrive and advise you of any difference:

-7-13-3042 is reserved
-7-13-4309 basically says what has been added to HB308, with changes to include water on pages 3 and 4, lines 15 p3 to line4 p4
-7-13-234 says fees collected, deposited with County Treasuer, in separate account. I suspect she meant to reference 7-13-233 (5), or my book is very outdated.

She goes on to say:

-If the PROPERTY OWNER CAN SHOW THAT THE SERVICES WERE NOT PROVIDED TO THE PROPERTY or the bill has been paid, district would not have authority to place on the tax roll.

I stand by my statement that if the bill was for a renter or a previous owner, it falls to the owner or current owner to pay the bill.

HB308 says:

-by July 15 of the fiscal year, give notice to THE OWNERS OF THE PROPERTY
-must be paid by August 15
-September 1, certifies to county assessor a list of property

If the bill was from a renter who has moved out or a prior owner, you must pay, because obviously, you can't prove **THAT THE SERVICES WERE NOT PROVIDED TO THE PROPERT** You may not have used the services or been aware the renter left without paying until you are served with a letter by July 15th.

I agree if the deficiency is caused by certain people not paying their charges, to levy a tax would not be fair to those who are paying. But if there is a problem or collection is so poor that the district lacking funds or if this is to force collection of all the people who are leaving unpaid bills, I would suspect that this comes down to mismanagement. Have policy in place to collect Deposits at the time services are requested and a policy of turning off for non payment before the bill exceeds the deposit.

I also foresee the word "**SERVICES**" being redefined to include availablity and benefit charges. Two reasons:

-Users is already being redefined to include any service, whether being used or not
-no provisions anywhere else to force collection of availability or benefits charges

I am against this portion of the bill, as it opens the door for abuse.

EXHIBIT 1
DATE 3-23-95
HB 308

BONDS:

I still don't know any more about Bonds than I did the last time I was here.

But, I do have some questions:

Page 4, line 27-28 in reference to Notice of election on incurring bonded indebtedness:

States: may include only the lands to be benefited
-does this mean, for example a main line extension as an improvement?
-would only those who would be affected vote, or would everyone inn the district be able to vote?
-why was location of polling places knocked out?

Page 5 New Section5: Issuance of general obligation bonds:

-term 30 years, according to HB308
-current law allows 40 years MCA 7-13-2322
-Why the difference??

-defination of improvements? Could this be main line extensions or or upgrading a part of the system?
-for manner and conditions, referenced to MCA 20-9-4. I don't understand why it is referenced to school districts? What was the prior standards, before this change? What are the advantages or disadvantages of this?

Page 6 New Section 6: Issuance of refunding bonds without election

-It sounds like you would issue refunding bonds to pay general obligation bonds, but rather then paying off the general obligation bonds, that the money from the refunding bonds would be deposited to an escrow account and used to pay the payments on the general obligation bonds?

EXHIBIT NO. 2

DATE 3-23-95

BILL NO. HB 308

We, the undersigned citizens of the State of Montana, strongly oppose HB308, which would allow County Water &/or Sewer Districts to Charge for the AVAILABILITY OF FACILITIES; Hire architects or engineers to design, do a study, plans, and specs for a system with the cost put against the property in the District or the area BENEFITED; Set rates, fees, tolls, rents, and other charges for services, FACILITIES AND BENEFITS DIRECTLY OR INDIRECTLY AFFORDED BY THE FACILITIES; Collection of delinquent charges as a TAX LIEN upon the property or mobile home; Would not require a vote of the people in the District to incur a Bonded indebtness under certain circumstances.

PRINTED NAME	ADDRESS	SIGNATURE
DAN ROSE	Hungry Horse	Dan Rose
Ed Whitaker	Hungry Horse	Ed Whitaker
~~[illegible]~~	~~[illegible]~~	
June V. Moser	BOX 260118 MARTIN City	June V. Moser
Vicki Hylton	Box 190083 HH	Vicki Hylton
Nancy Sales	331 1ST AVE Martin City	Nancy Sales
KARL DOWNING	Box 378 Coram	Karl Downing
Stella Hulse	P.O. Box 309 Coram	Stella Hulse
Sharon Tallent	Martin City	Sharon Tallent
Wendy Beyer	Hungry Horse	Wendy Beyer
SONJA GREEN	HUNGRY HORSE	Sonja Green
Clyde Walling	Hungry Horse	Clyde E. Walling
DORIS TURNER	Hungry Horse	Doris Turner
Robert Wagner	Hungry Horse	Robert Wagner
Douglas Miller	1165 Smith Lake Rd Kalispell, MT.	Douglas Miller
Linda Owens	martin city mt.	Linda Owens
Jim Owens	Martin City MT.	Jim Owens
[illegible]	Hungry Horse MT	
Brady Morrow	H H	Tracy Hughes
Brian & Mary WITHTHE	" "	Brian Whitaker
Jamie Abrahamson		

Exhibit 2 is a petition which consists of 8 pages of signatures. The original is stored at the Historical Society at 225 N. Roberts St., Helena, MT

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON HOUSE BILL 308

Call to Order: By CHAIRMAN TOM BECK, on April 7, 1995, at 9:00 a.m.

ROLL CALL

Members Present:
Sen. Thomas A. "Tom" Beck (R)
Sen. Larry L. Baer (R)
Sen. John "J.D." Lynch (D)
Rep. Douglas T. Wagner (R)
Rep. David Ewer (D)
Rep. Roger Somerville (R)

Members Excused: none

Members Absent: none

Staff Present: Bart Campbell, Legislative Council
Elaine Johnston, Secretary

This conference committee was dissolved and a free conference committee was appointed with the same members. However, the free conference committee did not meet because the members who did not agree in the conference committee met and had amendments prepared that they agreed upon. The free conference committee report is included in these minutes.

{Tape: 1; Side: A; Approx. Counter: ; Comments: .}

Discussion:

CHAIRMAN TOM BECK said that the House rejected the amendments the Senate put on HB 308 and he asked for a brief explanation of what was done to HB 308.

REP. DAVID EWER, said that the amendments put on by the Senate did three things. First, they put a lot of notification requirements in and second, the Senate had a problem with the way trailer parks were treated. When the bill came out of the House, liens for people who did not pay their water or sewer district charges, a lien could be put on the property. **REP. DOUG WAGNER** and **REP. EWER** had agreed that the lien would go against the home and not the land. The third amendment put back in a list of what

it meant to be benefitted property in a district. Lastly, he said that when dealing with general obligation bonds, the language on page 8 Prior to imposing rates or charges for facilities under that subsection was stricken and he agreed to the amendment.

REP. WAGNER said his concern for the bill was the list of what it meant to be benefitted property. He understood **REP. EWER** to want to finance water systems and if a line ran across someone's property, it would benefit their property and at some point they could be charged whether they hook up or not. In Hungry Horse, they took out a FHA loan and bought out the old water system and put in a new system. He stated that he would not support having the list back in the bill. He had a conflict somewhat with the bill because his wife had the potential of inheriting one third of trailer park. The water company in Hungry Horse was a district and when someone hooked up for service, they were charged a deposit and if for some reason they did not pay their bill, they could be shut off. HB 308 said that if a person did not pay their bill, a lien would be put on the property owner. **REP. WAGNER** said as a landlord, he could raise the rent but that would not give people the incentive to conserve water. He did not understand the bonding portion of the bill but did agree with the notification requirements. **REP. WAGNER** felt that there was enough other things to be dealt with in the bill that a conference committee would not be able to handle the problems.

CHAIRMAN BECK said that if they could not reach an agreement in conference committee, he was willing to go into a free conference committee.

REP. EWER said that he would always object to having a free conference committee on a bill like HB 308 unless there was a large technical flaw. He felt that in respect to the process, they should try to reach and agreement but he would not object to a free conference committee. He said that HB 308 was a very important bill to water and sewer districts across the state.

REP. WAGNER said that the world has gone on with out HB 308 and if there was such great need for the bill, if HB 308 did not pass the session, during the interim, the people who are affected by the bill would be willing to work with the sponsor to find a bill that would work in the future. He continued that the boards may have been in support but they did not take into consideration the consumers.

REP. ROGER SOMERVILLE said that they should go through section 7 which included the benefit list. He said that **REP. WAGNER** may be confused as to what the list actually did. He wanted to make sure that anyone who did not agree to their sewer district should not be taxed for the district but if they had signed on or agreed to the district, they should be charged.

SEN. LARRY BAER said that he agreed with **REP. WAGNER AND REP. SOMERVILLE** that section 7 seemed to be the focal point of the problems in addition to the mobile home park issue. He said that they should take a look at section 7 and modify the amendments accordingly to suit the needs of the people.

CHAIRMAN BECK said that the first amendment dealt with the title and that was fine. The second amendment dealt with factors to determine if the property would be benefitted, and that would be tied in with section 7. Amendment three dealing with the sections in the code he was not sure and asked **Bart Campbell** to explain the amendment.

Mr. Campbell said that in amendment number five, those are the two sections that are being amended to fit in with the title.

CHAIRMAN BECK asked what the applicability date was.

Anna Miller, Department of Natural Resources, said that they were talking about being able to assess people and put a lien on their tax property, so if the bond was issued in the eighties people who sign on to the bond are committing themselves to a period of time.

CHAIRMAN BECK asked if the Department asked for the effective date amendment.

Ms. Miller said that it was part of Mae Nan Ellingson's amendments.

REP. WAGNER asked if what **Ms. Miller** said was they could go back and assess property taxes from back in the eighties with out a vote.

Ms. Miller said if a water and sewer district issued a bond in the eighties for twenty years, and it had been paid regularly but something in 1995 made them quite paying their bill, they could do the assessments talked about.

CHAIRMAN BECK said there was no problem with amendment number five which dealt with the public hearing process.

REP. EWER said if people are delinquent with their water and sewer, HB 308 allowed districts to put a lien against the property just like the cities can do.

REP. WAGNER said that was one of the areas where there was a problem because there was no reason a well managed system could not stop the delinquency.

REP. EWER said that every time **REP. WAGNER** made a point he would have a counter point. He continued that HB 308 did not say a lien was required, it did give another option. They had made sure in the House to make it a permissive option.

REP. SOMERVILLE asked how in Hungry Horse they dealt with the delinquent payments.

REP. WAGNER said that typically, the bookkeeper would provide the list of delinquent payments and a posting notice would be put on the users property to pay by a certain time and if not paid they would be shut off. He said that when one was shut off, there was a message sent to the people and there has been less than 1% shut off.

REP. SOMERVILLE asked how they handled a person who was six months in debt and still owned the property but had left town.

REP. WAGNER said they would not let people get six months in debt. Secondly, they would call a collection agency if the person left and the agency would try to collect 50% and the other 50% would be written off. Also, there would be a deposit on file to cover any loss.

SEN. BAER said that the problem arose from the difference between the land owner who accrues the debt must be public services and a renter of a trailer park that accrues the debt. He said that if you were going to hold the trailer park owner responsible by way of a lien against the property for unpaid debts of the tenants, the only way to reach an equitable solution is if the landlord requires an adequate security deposit to cover the liability.

REP. WAGNER said that you can not take utility bills out of a security deposit.

Barbara Leitz, from Hungry Horse, said that according to Montana State Code 70-25-101 on security deposits only allowed for cleaning, tangible loss, and unpaid rent to be taken from a security deposit.

SEN. BAER said that possible what they would need to do is create another type of security deposit for situations like utilities that would not necessitate a lien on the property. The debts should be followed up periodically rather than letting them accrue into a large problem at the end of the year.

REP. WAGNER questioned if that would take a separate piece of legislation or if it would fit within the scope of HB 308.

SEN. BAER said he was not sure if that would conform with the title of the bill.

Mr. Campbell said that it would require a change in the landlord tenant law or creating a provision that would not withstand that section. He said it would be within the title.

REP. SOMERVILLE asked if he owned a fourplex, would the same rules apply to renters of a fourplex as those in a trailer.

CHAIRMAN BECK said the reason he was concerned was that when the bill was in the Senate Local Government Committee, the trailer home was being assessed and if the trailer was to leave, who would they collect the water bill from? There would not be the problem with permanent structures as there will mobile units.

REP. SOMERVILLE said in reality, there was the same situation except one had wheels, so the rule should apply to apartments as well as mobile homes.

CHAIRMAN BECK said when renting a unit, he did not know how the landlord passed the fees onto the renter. He stated when dealing with the conservation of water, metered water would be metered to each tenant and you could meter the mobile home.

REP. EWER stated the issue of the bill was whether a lien would be against the mobile home or the property and the bill as it stood, mobile homes are the only carved out exception. With rental property, usually the landlord pays for the water and it was not separately metered. To allow landlord tenant situations where the tenant would have to be responsible he did not agree with.

SEN. BAER said the only thing you would be able to lien would be the real property because the tenant would be gone. If the property owner was to be held liable for the tenant, there should be some type of mechanism to protect the landlord.

REP. SOMERVILLE said to **REP. EWER** that the basis to HB 308 was to work favorably toward the bonding of the system and the lien language was needed to have a guarantee to pay for the system. You would still be able to assess the property owner so that he could make the payments and still sell the bonds.

REP. EWER said that he objected to the insinuation that because he was the bond program officer that he was doing stuff for the bonds. He stated the motive for the bill was to make current water and sewer law that was not working and to enable a political subdivision, water and sewer district to be able to collect its charges in a manner that other political subdivisions had.

CHAIRMAN BECK asked **Mr. Campbell** to research if the suggestion of **SEN. BAER** would work. He continued with amendment six.

Mr. Campbell said that the amendment dealt with the language stricken by the mobile home exception.

CHAIRMAN BECK asked **REP. WAGNER** if he still objected to the amendment.

REP. WAGNER stated that was one of the areas of concern he had because there was no conservation incentive.

CHAIRMAN BECK continued on with amendment seven which dealt with the definition of benefitted and asked for some comments.

SEN. BAER stated that to charge a property owner for the use of a facility just because the line runs by their property was patently unfair.

CHAIRMAN BECK asked **REP. EWER** to defend his position that a line across a piece of property provides a benefit but the property owner does not hook up why should they be assessed charges.

REP. SOMERVILLE clarified that if a line went across a persons property, it may not indicate whether they need to be on it or not. It must go back to whether the person was in the water or sewer district. For a sewer district to operate, they may have to have a sewer plant 10 miles away from the town. That 10 miles could cross farmed fields so the farmer has not signed or voted into a water district, they should not have to pay any services on that line but if they did sign themselves into the district they should have to pay the charges.

CHAIRMAN BECK said that it was hard to believe they would have piece meal water and sewer districts.

REP. SOMERVILLE said that Lakeside was a perfect example of districts that are not contiguous.

REP. EWER stated that HB 308 did not give any authority to a district to impose rates and charges on property outside of the district. If the line went outside of a district because of a treatment plant, those people not in the district would not be assessed any charges. He questioned who should pay rates and charges within a district. There are three types of people in a district, those who are directly connected, those who are benefitted, and those who are not benefitted. HB 308 tried to make clear that there are those folks who are not benefitted and live in the district that would not have to pay for facilities they would never use. Section 7 tried to flush out what it meant to be benefitted but what was strange was that there was ample law about other types of districts dealing with benefitted property like television districts. HB 308 stayed with many years of precedent and for the first time gave some parameters for what it meant to be benefitted. He said he would not have cared if they struck the parameters out.

REP. WAGNER said that they had struck the parameters out on the House floor but airwaves could not be controlled so a television district needed to have everyone involved. If an electric line goes over your property but you are not hooked up, you are not assessed a charge. He felt this should be the same for water and sewer districts. In Hungry Horse, they had people with vacant property in the water district who did not receive any charges until hooked up.

REP. SOMERVILLE stated that television stations are mostly private enterprise and gas was mostly private enterprise. Sewer and water are public entities so there needs to be a way to fund a district.

REP. EWER said that it was important to remember what the law and HB 308 did. First, to be a water and sewer district you must actively petition and it required a substantial number of people to do that. HB 308 requires the debt to be voted by the people and it must be 40% of the voters and a majority vote. The only facility charge that could be imposed was capital fees which had to be voted by the district. If you say you were not benefitted, and you could not hook up for three years and don't want to be included in the district, that process was already in statute and with HB 308 they tried to do a better job.

SEN. J.D. LYNCH said that he agreed with **REP. EWER** only because he had an apartment that he had not used in eight years but he still paid garbage on it. He stated that much of the session dealt with local control and when section 7 was put back in, your county commissioners and district board of directors decide who would benefit and who would not. Apparently, he said the committee did not want to give local control and if there were two votes against putting that back in the bill they were not going anywhere.

CHAIRMAN BECK said he was not convinced because a line running through your property was grounds to be assessed a charge. There should be a way for a person to get out of a district.

SEN. LYNCH said he agreed that if there is no beneficial use and you will never have any use, then you should not have to pay. The board of county commissioners and the board of directors in a district would make sound judgments on determining if a person would be benefitted.

SEN. BAER stated that a vacant lot which may not be able to be built on you would still be charged the sewer fee for the square footage of the lot. Whether the property is currently served by the facilities was a valid criteria, if it is not served by the facilities then a person should not pay. The next criteria of a property would be served by the facilities if the owner elected to connect, he said that they were contradicting the first criteria and becoming very ambiguous. Additional facilities required to connect with the facility was a gray area he stated. He said that the only criteria that applies was whether or not the property was being served by the facilities. If you receive something you should pay for it but if you don't receive or want a facility, you should not have to pay. Just to pay for an indebtedness in a district, you should not require people to pay for an item that was distinguishable by use.

SEN. LYNCH asked **SEN. BAER** about item (g) on the list as he thought it seemed to be distinguishable by the board. If your

lots went up in value because of sewage available, shouldn't that mean something?

SEN. BAER said that it was an inadvertent increase perhaps and was not brought about by the property owner, it was not a criteria for them to pay.

CHAIRMAN BECK said he agreed with **SEN. BAER** because if he had a forty acre lot that he was farming and the sewer goes along beside that and the use of the lot does not change he should not have to pay.

REP. SOMERVILLE said there was still some confusion as to how the districts were set up. If a person did not petition to get into a district then they should not have to pay but if a person has three city lots and petitioned to get into the district they would benefit. If a well was put on a forty acre lot an investment of $8,000 was beneficial to the property. If your lot gains value and you petitioned to get into the district you should be paying he said.

REP. WAGNER asked if a person was in the district boundaries and voted against the district. There was 10% needed to start the process and 40% of the voters need to turn out for the election.

REP. EWER said that 40% needed to show up to vote and 60% of those needed to approve the district.

REP. WAGNER said that they had many people in their district who wanted to petition out but the board did not allow them out but did not charge them because they had no beneficial use.

CHAIRMAN BECK asked what the possibility of using actual use rather than beneficial use?

Mr. Campbell said that 7-13-2302, county water and sewer districts, in subsection three used the word benefitted and he questioned if there were court decisions on what benefitted meant.

SEN. BAER asked what the courts definition of benefitted was?

Mr. Campbell said he would get a synopsis of the court cases.

SEN. BAER said that regardless of what the courts have decided benefitted to mean the legislature could make a change.

REP. EWER said the House striped out the parameters and if the committee wanted to strip them out it was fine.

Motion/Vote: **SEN. LYNCH MOVED TO STRIKE THE NEW SECTION SEVEN. THE MOTION CARRIED WITH REP. SOMERVILLE VOTING NO.**

Discussion:

REP. WAGNER asked **Ms. Leitz** about a part of the bill that did not allow the people to vote on an indebtedness.

Ms. Leitz said she questioned when bonded indebtedness was referenced to school districts. School districts she said could incur a bonded indebtedness up to 45% of the taxable value within the district. She wanted to know if that meant they could enforce that without holding an election or if they would sell bonds for $10,000.

REP. EWER said that all the debt authorized in HB 308 had to be voted with the exception of the district refunding for advantage to the purposes for the district. You can refund existing debts without a vote and was standard for all governments. When debt was used to retire debt, generally a vote was not needed.

SEN. BAER said that he was not sure totally eliminating section seven was the right thing to do. He asked how the elimination of section seven would affect the implementation of HB 308. Would a person still under law be required to pay a fee? He also asked if the determination of a benefit by the county commissioners should be left?

Mr. Campbell said that benefitted would still be an undefined term unless there was some court precedent. With other districts, it talked about being able to charge benefitted property but he was not sure if it was general concept to charge benefitted property existed. Most of the current sewer district law was based on charges as the way a district would meet its expenses.

REP. EWER said that under section seven all it did was try to flush out what it meant to be benefitted. If there were no parameters for what it meant to be benefitted, the district would determine who would be benefitted and they could still charge those who were not actually hooked up. If section seven was taken out and you insisted if you were not hooked up that you wouldn't pay for the capital charge that people voted on themselves, then water and sewer district finance law would not be used. In 1988, a court decision said if a water line went passed your property but you were not hooked up you did not have to pay but at anytime you could force the district to hook you up. He stated that was unfair.

CHAIRMAN BECK asked what if they left only subsection (a) in the HB 308?

REP. EWER if that stayed in then the statute would not work.

SEN. BAER asked about leaving in lines 10 and 14 of section seven but modify them but inserting "use of facilities" on line 12 and on line 13 strike "or availability of services". He said that would solve some of the problems of striking the entire section.

CHAIRMAN BECK told the committee to think about the bill and if they could come up with something everyone could live with that would be great but if not they would have to ask for a free conference committee. He asked **REP. EWER, REP. WAGNER, REP. SOMERVILLE,** and **SEN. BAER** to meet and work out a solution to present to the committee.

FREE CONFERENCE COMMITTEE

on House Bill 308
Report No. 1, April 7, 1995

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 308 and recommend the following amendments:

1. Title, line 5.
Strike: "AVAILABILITY"
Insert: "DIRECT BENEFIT"

2. Title, line 9.
Following: "JURISDICTION;"
Strike: "PROVIDING" through "BENEFITED;"

3. Title, line 12.
Following: "DATE"
Strike: "AND AN APPLICABILITY DATE"

4. Page 2, line 18.
Strike: "in accordance with 7-13-2301"

5. Page 4, line 3.
Strike: "(a)"

6. Page 4, line 5.
Strike: "or indirectly"

7. Page 4, line 6.
Following: "and"
Insert: "direct"

8. Page 4, lines 17 through 22.
Strike: subsection (b) in its entirety

9. Page 4, line 27.
Following: "(a)"
Strike: "A"

ADOPT

REJECT

Insert: "If the board has ordered discontinuance of service as provided in subsection (3) and the person or entity who received the service has not made full payment of all delinquent charges, interest, penalties, and deposits, then a"

10. Page 5, line 14.
Following: "~~HOME.~~"
Insert: "If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property."

11. Page 5, line 15.
Strike: "assessments"
Insert: "delinquent charges"

12. Page 5, line 29.
Strike: "5"
Insert: "7"

13. Page 7, line 10 through page 8, line 4.
Strike: section 7 in its entirety
Renumber: subsequent sections

14. Page 8, line 8.
Strike: "30"
Insert: "40"

15. Page 8, lines 16 and 17.
Following: "use" on line 16
Strike: "or" on line 16 through "availability" on line 17

16. Page 9, lines 19 and 20.
Strike: "THROUGH" on line 19 through "9" on line 20
Insert: "and 8"

17. Page 9, line 21.
Strike: "THROUGH 9"
Insert: "and 8"

18. Page 9, line 23.
Strike: "-- APPLICABILITY"

Strike: "(1)"

19. Page 9, lines 25 and 26.
Strike: subsection (2) in its entirety

We recommend that the amendments considered above to House Bill 308 be acceded to by the senate.

And this FREE Conference Committee report be adopted.

For the House:

Chair
Wagner

Somerville

Ewer

For the Senate:

Chair
Beck

Baer

Lynch

adopted. (74-15)

REPORTS OF SELECT COMMITTEES

Free Conference Committee
on House Bill 308
Report No. 1, April 7, 1995

Mr. Speaker and Mr. President:

We, your Free Conference Committee on House Bill 308, met and considered:

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Strike: "30"
Insert: "40"

15. Page 8, lines 16 and 17.
Following: "use" on line 16
Strike: "or" on line 16 through "availability" on line 17

16. Page 9, lines 19 and 20.
Strike: "THROUGH" on line 19 through "9" on line 20
Insert: "and 8"

17. Page 9, line 21.
Strike: "THROUGH 9"
Insert: "and 8"

18. Page 9, line 23.
Strike: "-- APPLICABILITY"
Strike: "(1)"

19. Page 9, lines 25 and 26.
Strike: subsection (2) in its entirety

We recommend that the amendments considered above to House Bill 308 be acceded to by the Senate.

And this FREE Conference Committee report be adopted.

For the House:

Wagner, Chairman
Somerville
Ewer

For the Senate:

Beck, Chairman
Baer
Lynch